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STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD
BOARD MEETING

JOE SERNA JR., CAL EPA BUILDING
CENTRAL VALLEY AUDITORIUM
1001 I STREET, SECOND FLOOR
SACRAMENTO, CALIFORNIA

TUESDAY, AUGUST 14, 2001
9:36 A.M.

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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

A P P E A R A N C E S

BOARD MEMBERS PRESENT:

LINDA MOULTON-PATTERSON, Chair
DAN EATON
STEVEN R. JONES
JOSE MEDINA
MICHAEL PAPARIAN

STAFF PRESENT:

MARK LEARY, Interim Executive Director
KATHRYN TOBIAS, Chief Counsel
ELLIOT BLACK, Legal Counsel
DEBORAH MCKEE, Board Assistant
YVONNE VILLA, Board Secretary

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1 P R O C E E D I N G S

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3 BOARD CHAIR MOULTON-PATTERSON: I want to
4 welcome everyone to our August Board meeting, and I'd
5 like the secretary to call the roll, please.

6 BOARD SECRETARY VILLA: Eaton?

7 BOARD MEMBER EATON: Here.

8 BOARD SECRETARY VILLA: Jones?

9 BOARD MEMBER JONES: Here.

10 BOARD SECRETARY VILLA: Medina?

11 BOARD MEMBER MEDINA: Here.

12 BOARD SECRETARY VILLA: Paparian?

13 BOARD MEMBER PAPARIAN: Here.

14 BOARD SECRETARY VILLA: Senator Roberti?

15 (Not present.)

16 BOARD SECRETARY VILLA: Moulton-Patterson?

17 BOARD CHAIR MOULTON-PATTERSON: Here. Okay. We
18 have a quorum.

19 At this time I'd like to ask everyone to please
20 turn off their cell phones and pagers, we'd really
21 appreciate that.

22 And on behalf of the Governor and the California
23 legislature, I'd like to again remind everybody to
24 conserve. And with that, we're trying to conserve, and
25 we have a limited number of copies of the agenda items in

1 the back of the room if you'd like to get a copy.

2 For those of you in the audience, there are
3 speaker slips in the back in which to address the Board
4 on any item, please fill one out, put the item number on
5 it, and give it to Ms. Villa who's right over here, and
6 we'll be happy to hear your comments.

7 Lastly, I wanted to let you know, if it's okay
8 with my fellow Board members, that we will be having a
9 brief closed session at 1:30. Is that okay with
10 everyone? Okay.

11 And we will be having our lunch break at 12:00.

12 Do any members have ex-parte?

13 Mr. Eaton.

14 BOARD MEMBER EATON: I'm up to date. Thank you.

15 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.

16 BOARD MEMBER JONES: I'm current.

17 BOARD CHAIR MOULTON-PATTERSON: I have none.

18 Mr. Medina.

19 BOARD MEMBER MEDINA: None to report.

20 BOARD CHAIR MOULTON-PATTERSON: Mr. Paparian.

21 BOARD MEMBER PAPARIAN: None.

22 BOARD CHAIR MOULTON-PATTERSON: Okay. Any
23 reports from Board members?

24 Mr. Eaton.

25 BOARD MEMBER EATON: Yes, Madam Chair, just

1 briefly. Last week I had the opportunity, along with Mr.
2 Jones, to return to the Napa Valley project that was
3 funded a couple of years ago through a grant by us at the
4 Board with Bob Pasconi and Green Waste and Composting
5 with soil moisture retention as well as soil erosion
6 prevention in the Napa Valley. It was some of the new
7 techniques.

8 And this was the second sort of follow-up
9 presentation to a lot of the vineyard owners and workers
10 on Thursday evening to try and get them more involved.
11 There was a good turnout and also a very good dialogue,
12 especially in light of the fact that the harvest began
13 yesterday in Napa Valley, so it was very difficult for a
14 lot of them to go there.

15 But I think that the money that the Board helped
16 put up a couple of years ago as well as the money that
17 was put in by the private sector, did produce some very,
18 very positive results; and results by which I think all
19 of the stakeholders involved, from the local government
20 officials to the environmental community to the actual
21 business people and farmers in the Napa Valley, is not
22 only beneficial, but something that I think will work on
23 a long-term solution to their water quality problems
24 which have been increasingly of concern given the amount
25 of hillsides that are now being planted and some of that.

1 So I think it was a real good project and
2 hopefully we'll be able to expand it to other
3 communities, both in the Napa Valley as well as Sonoma.
4 That will do it.

5 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
6 Eaton.

7 Mr. Jones.

8 BOARD MEMBER EATON: Just a follow-up to what
9 Mr. Eaton said on the Rutherford event. I had a brief
10 conversation with Art Baggett, chairman of the Water
11 Board, to let him know what this project was about. He
12 was interested in looking at future projects in
13 collaboration with the Waste Board.

14 So I guess I'm looking to the Board members to
15 make sure that we want to continue in this and work with
16 the Water Board and with other agencies to see if we can
17 maximize and leverage our dollars to, there are some huge
18 benefits to this program, especially the fact that
19 moisture retention went late into the season where,
20 through projects, not only soil erosion and those types
21 of issues, we may look at altering the irrigation habits
22 in the Napa Valley. And that aquifer is being
23 overdrafted today, and so the implications are huge.

24 So I'm hoping that we can continue dialogue with
25 our sister agencies to see if we can put other pilot

1 programs together to further that. So I would hope
2 everybody would agree with that.

3 BOARD CHAIR MOULTON-PATTERSON: Certainly.
4 Thank you, Mr. Jones.

5 Mr. Medina.

6 BOARD MEMBER MEDINA: No reports at this time.
7 Thank you.

8 BOARD CHAIR MOULTON-PATTERSON: Mr. Paparian.

9 BOARD MEMBER PAPARIAN: Thank you. Briefly, I'd
10 like to give a special thanks to Tom Estes and Rick
11 Muller for their hard work on the national product
12 stewardship effort related to carpet we're going to be
13 hearing about later in the agenda.

14 I think the Board's involvement in these kinds
15 of efforts, including the one that I'm working on with
16 Mark Kennedy and my staff and others on E-waste, are
17 really important, especially in light of the fact that
18 product stewardship and materials management have such a
19 prominent role in our strategic plan that we'll also be
20 looking at later in the agenda.

21 The only other thing I wanted to mention was
22 that, in case anybody hasn't heard, the Department of
23 Toxic Substances Control has come out with their
24 regulations regarding CRTs and how they should be handled
25 and how the people who are handling them are going to be

1 regulated. These emergency regs took effect just a few
2 days ago.

3 After they went into effect we did a joint press
4 release with the Department of Toxics talking about the
5 regulations as well as other efforts that we're involved
6 with with electronics waste.

7 BOARD CHAIR MOULTON-PATTERSON: Okay. Thank you
8 very much.

9 And in the interest of time I just wanted to
10 report very, very briefly that on August 7th I was able
11 to attend the L.A. County Board of Supervisors meeting,
12 and they were recognizing the Board on all the efforts
13 that we put in on the Antelope Valley cleanup. And they
14 have a very beautiful resolution for each of the Board
15 members, you'll be receiving it. And they were very,
16 very pleased and very complimentary of the Board. And it
17 was really nice to hear those compliments, and I just
18 wanted to pass those along to the Board members. Senator
19 Roberti was able to be there in addition to myself.

20 And with that, I'll turn it over to Mark Leary,
21 our Interim Executive Director for his report.

22 INTERIM EXECUTIVE DIRECTOR LEARY: Thank you,
23 Madam Chair, members of the Board.

24 I do have a couple of items I'd like to report
25 on for the Board this morning. Initially, in regards to

1 the Senate Select Committee, on Tuesday, July 31st
2 Senator Gloria Romero held a press conference in front of
3 the Puente Hills Landfill in Whittier to announce the
4 formation of the Senate Select Committee for Landfills
5 which she is chairing.

6 The committee was created to address issues
7 raised in the State Auditor's report, and will hold
8 hearings on public oversight, creating recycling
9 strategies, and drafting laws to tackle the growing
10 E-waste problem. Joining Senator Romero on the committee
11 are Senators Richard Alarcon, Byron Sher, Bob Margett,
12 and Nell Soto.

13 We are preparing background information to send
14 to the committee in advance of its first hearing which
15 will be held a week from Friday on August 24th at the
16 Ronald Reagan State Building in Downtown L.A. Both
17 Deputy Director Julie Nauman and I are planning to attend
18 and present the background information, and to answer any
19 questions that the committee members may have.

20 We've been informed that the committee has also
21 asked the Department of Toxic Substances Control, Air and
22 Water Board, as well as other agencies to be present as
23 well.

24 I will keep you apprised of our work on the
25 background documents, and our testimony over the next

1 week or so.

2 In regards to 2202, the Senate and staff has
3 been updating the Board regularly on our progress in
4 reviewing the diversion rate measurement system. Senate
5 Bill 2202 required the Board to convene working groups to
6 review the system and recommend improvements in a report
7 to the legislature.

8 The working group involved about seventy
9 stakeholders from around the state. It's been an
10 intensive effort for staff and the working group members
11 in a short period of time.

12 I'm pleased to announce that the first draft of
13 the comprehensive analysis of the Integrated Waste
14 Management Act Diversion Rate Measurement System has been
15 released for public review and comment. Copies have been
16 delivered to the Board members' offices, jurisdictions,
17 and interested parties. Comments from the draft are due
18 August 31st.

19 At next month's Board meeting we'll update you
20 on the types of comments we've received. Staff will
21 review the comments, prepare responses, revise the
22 document as appropriate, and send the revised draft
23 report out for review in mid-September.

24 If all goes as planned, the report should be
25 scheduled for the Board's consideration finally in

1 October. The final report is due to the legislature in
2 January.

3 I'd like to acknowledge and thank the staff for
4 all their hard work in analyzing the data, working with
5 the large diverse group of stakeholders, and preparing
6 the report. We'll also be working on some sort of
7 recognition for the stakeholders who participated in the
8 effort as well.

9 As you may recall, I announced at the last
10 month's Board meeting in Long Beach that the Governor had
11 signed the 2001-2002 fiscal year budget, we didn't go
12 over it then, and I want to take a quick moment now to
13 highlight the significant changes to the Board's budget.

14 Changes include the two year limited term
15 extension for 23 and a half positions within the Board's
16 program. These positions were set to expire June 30th,
17 2001.

18 The budget also includes an increase in
19 expenditure authority of \$26 million, and twelve new
20 positions to implement the tire program.

21 If any of the members have any questions about
22 the budget, Terry Jordan and I will be happy to review it
23 in more detail.

24 And then finally I'd like to send best wishes
25 and happy retirement to Cal EPA Sam Banks who will soon

1 be visiting those secret fishing holes he's been helping
2 to protect for the last three decades. Sam's been in
3 state service for thirty years, starting as an Employment
4 Development Officer of the Fair Employment and Housing,
5 an analyst at the Department of Finance, moving on to the
6 Department of Industrial Relations and then, of course,
7 more recently at good old Cal EPA. At agency, Sam has
8 helped all of us BDO's and helped shape our
9 administrative system and support our environmental
10 programs.

11 Happy retirement, Sam, you deserve it. All of
12 us here at the Board want to wish you well.

13 MR. BANKS: Thank you.

14 (APPLAUSE.)

15 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
16 Leary. And Sam, we're really going to miss you but we're
17 envious too, and have a great retirement.

18 MR. BANKS: Thank you.

19 BOARD CHAIR MOULTON-PATTERSON: Thank you for
20 being here.

21 MS. JORDAN: And Madam Chair, if you don't mind?

22 BOARD CHAIR MOULTON-PATTERSON: Yes, Ms. Jordan.

23 MS. JORDAN: I would also like to give my thanks
24 to Mr. Banks. He's been a wonderful leader through the
25 years. I think we've been together now for five or six

1 years.

2 MR. BANKS: Six years, two months, and five
3 days.

4 MS. JORDAN: And that's just from me. Anyway, I
5 would like to thank him, and I wish him a very happy
6 retirement.

7 BOARD CHAIR MOULTON-PATTERSON: Great. Thank
8 you so much, we all appreciate everything you've done.

9 MR. BANKS: Thank you.

10 BOARD CHAIR MOULTON-PATTERSON: Okay. And with
11 that we go to our consent agenda. Before I, we do that,
12 I did want to mention items 20 and 22 have been pulled.
13 Items number 14, 15, and 16 have been placed on the
14 consent agenda.

15 Would any board member wish to pull any of these
16 items from consent?

17 Okay. And with that I'll ask for a motion to
18 adopt the consent calendar. I forgot to do that last
19 meeting.

20 BOARD MEMBER MEDINA: Madam Chair, I'd like to
21 move that we adopt the consent calendar.

22 BOARD CHAIR MOULTON-PATTERSON: Okay. We have
23 a motion by Mr. Medina.

24 BOARD MEMBER JONES: Second.

25 BOARD CHAIR MOULTON-PATTERSON: Seconded by Mr.

1 Jones to adopt consent items 14, 15, and 16.
2 Please call the roll.
3 BOARD SECRETARY VILLA: Eaton?
4 BOARD MEMBER EATON: Aye.
5 BOARD SECRETARY VILLA: Jones?
6 BOARD MEMBER JONES: Aye.
7 BOARD SECRETARY VILLA: Medina?
8 BOARD MEMBER MEDINA: Aye.
9 BOARD SECRETARY VILLA: Paparian?
10 BOARD MEMBER PAPARIAN: Aye.
11 BOARD SECRETARY VILLA: Moulton-Patterson?
12 BOARD CHAIR MOULTON-PATTERSON: Aye. Okay,
13 that brings us to item number one, continued item number
14 one, Source Reduction and Recycling Element
15 Implementation and Potential Revisions to the CIWMP
16 Enforcement Policy, Part Two.
17 Okay, Mr. Schiavo, it's your department.
18 MR. SCHIAVO: Yeah, Pat Schiavo, Diversion
19 Planning and Local Assistance Division. And Catherine
20 Cardozo will be presenting this item.
21 BOARD CHAIR MOULTON-PATTERSON: Okay. And I
22 just want to mention that we do have speakers, and we'd
23 also had a letter that -- before we get into it I think
24 I'll call on Ms. Tobias.
25 All the Board members received a letter from Mr.

1 Rufus Young on this, and I just wanted to ask your legal
2 opinion, it was about the wording of the item, is that
3 correct?

4 LEGAL COUNSEL TOBIAS: I think Mr. Block could
5 address that with your permission.

6 BOARD CHAIR MOULTON-PATTERSON: Okay. Thank
7 you. I'm sorry, we'll do this first.

8 MS. CARDOZO: It's also included in my
9 presentation, but that's okay.

10 LEGAL COUNSEL BLOCK: I'll keep this brief.
11 Elliot Block for the legal office.

12 Very briefly, I did receive a copy, I guess I
13 saw it yesterday, from Mr. Rufus Young just questioning
14 the noticing of item number one.

15 So for the record I would like to specifically
16 say that it is legal office's opinion that not only is
17 the item itself noticed properly, but that the Board
18 clearly has authority in statute to adopt -- well it has,
19 in fact, already adopted the policy back in 1995 and, in
20 fact, to revise the policy without the need for using the
21 formal regulatory process.

22 It is specifically authorized in Public
23 Resources Code section 41850(D)(3) which specifically
24 incorporates by reference this policy and any revisions
25 that the Board would like to make to it.

1 In addition, the other issue that was raised in
2 the letter was one of notice to jurisdictions. And a
3 copy of the proposed revisions was mailed out or
4 e-mailed, depending on the particular jurisdiction, to
5 each individual jurisdiction either two or three months
6 ago. So they've all been specifically notified about
7 this item, and the proposed revisions that were to be
8 made to the item.

9 So we're very confident both that we have the
10 authority for the policy, and that the noticing has been
11 proper, and that there's no jurisdiction that should not
12 have been aware that this was, in fact, coming forward.

13 BOARD CHAIR MOULTON-PATTERSON: And this was
14 first adopted in February of '95?

15 LEGAL COUNSEL BLOCK: That's correct.

16 BOARD CHAIR MOULTON-PATTERSON: Okay. Any
17 questions of Mr. Block?

18 Okay. Thank you very much, Mr. Block.

19 And now we'll turn it over to Ms. Cardozo.

20 MS. CARDOZO: Good morning, Madam Chair and
21 Board members. My name is Catherine Cardozo with the
22 Board's Office of Local Assistance.

23 And agenda item number one is staff's
24 recommendations for revisions to the Board's Countywide
25 Integrated Management Plan, or CIWMP, Enforcement Policy,

1 Part two.

2 The CIWMP enforcement policy describes how the
3 Board would evaluate a jurisdiction's level of
4 implementation of its source reduction and recycling
5 element or SRRE, and household hazardous waste element.
6 This includes an evaluation of both program
7 implementation efforts and diversion requirement
8 achievement.

9 The Board first adopted the CIWMP enforcement
10 policy in February of '95. The policy was applied to the
11 '95-'96 and '97-'98 biennial reviews.

12 Staff is now proposing minor revisions to that
13 document, including one new scenario for several reasons:

14 One, to reflect subsequent legislative changes
15 that is in Senate Bills 2202 and 1066 to the Board's
16 express concern with the relationship of diversion
17 programs to diversion rates, and the need to emphasize
18 diversion program implementation. In other words, a
19 jurisdiction's responsibility to implement its SRRE.
20 Such an emphasis ensures that jurisdictions are
21 implementing diversion programs which is the cornerstone
22 of AB 939.

23 Three, in response to some jurisdictions'
24 concern that neighboring jurisdictions are not
25 implementing programs and yet have high diversion rates.

1 And finally, since many jurisdictions have
2 established new base years since the first CIWMP
3 enforcement policy was adopted, the revisions put
4 jurisdictions on notice that even with a new base year
5 they are still responsible for implementing their SRRE,
6 that is implementing diversion programs.

7 In all the item has been open for public comment
8 for three months now, roughly ninety days. This item was
9 brought before the Board in May of this year as a
10 discussion item, and again at the June Board briefing.

11 Staff sent jurisdictions e-mail notices of these
12 items prior to both meetings.

13 A revised item that included public comments
14 received was subsequently heard as a consideration item
15 at the July Board meeting, but no Board action was taken
16 at that time.

17 I would like to emphasize that the proposed
18 policy revisions do not change good faith effort. I
19 would also like to emphasize that staff's review of an
20 annual report includes an analysis of potential problems
21 the jurisdiction may have experienced, either in
22 calculating its diversion rate or in implementing
23 diversion programs.

24 For example, a jurisdiction may include in its
25 annual report a discuss of the factors it believes would

1 affect the accuracy of this diversion rate, such as the
2 effects of self-hauled waste and C and D waste.

3 Also, the revised policy does not preclude a
4 jurisdiction from petitioning the Board for a 1066
5 extension or referral for a rural reduction.

6 Staff only received a few comments from the
7 discussion items in May and June, and these comments and
8 staff's response are included in attachment one of this
9 item.

10 Just recently staff received a comment in
11 support of the policy, and another concerning whether the
12 revisions are actually proposed regulatory changes as
13 we've just discussed.

14 And again staff's response to this last comment
15 is that the Board adopted this enforcement policy
16 document in '95, and has used it in processing both the
17 '95-'96 and '97-'98 biennial reviews. Since then the
18 enforcement policy and any subsequent amendments to it
19 has been incorporated into statute, and to be considered
20 by the Board when determining whether a jurisdiction has
21 made a good faith effort to implement its SRRE to achieve
22 the diversion requirements.

23 In addition, the Board's SB 2202 synthesis
24 working group met twice in June, and their
25 recommendations appear to be consistent with the proposed

1 new scenario three.

2 Finally, I would like to mention the
3 jurisdiction's 2000 annual reports are due to the Board
4 by September 1, and that the Board's 120 day review and
5 notice period required in SB 2202 begins upon the Board's
6 receipt of an annual report.

7 That concludes my presentation. Are there any
8 questions?

9 BOARD CHAIR MOULTON-PATTERSON: Thank you.
10 Questions for Ms. Cardozo at this time?

11 Okay. We'll go to our public speakers. Mike
12 Mohajer, County of L.A.

13 MR. MOHAJER: Good morning, Madam Chair, member
14 of the Board. My name is Mike Mohajer and I'm
15 representing Los Angeles County Integrated Waste
16 Management Task Force.

17 Madam Chair, last July we forwarded a letter to
18 the Board in reference to item twenty, and I'm basically
19 going to read the same concern that was expressed in that
20 July 20, 2000 letter in reference to item twenty.

21 The first issue that we had raised was making
22 little changes to it, it says on page 1-1 of the staff
23 report, it is stated that recommendations of the SB 2202
24 working group were evaluated for potential conflicts.
25 The proposed revision to the enforcement policy in that,

1 "SB 2202 synthesis working group's comments supported the
2 proposed revisions."

3 In addition, it is stated that,
4 "The staff also received one set
5 of comments suggesting minor wording
6 changes to the proposed revisions.
7 The staff has revised the proposed
8 policy accordingly."

9 "Because the comments received
10 are in support of the proposed
11 revision and staff recommendation--
12 staff recommends the CIWMB adopted
13 the revised enforcement scenarios as
14 provided below."

15 Our concern is that at least we explain why the
16 L.A. County Task Force representing 89 jurisdictions did
17 not submit comments, as stated in our letter, but at
18 least you had the letter, again dated July 24th, that
19 expresses our concern. And the staff report here this
20 morning had not made any reference to it whatsoever.

21 The second issue was that, "In addition, we are
22 concerned," I'm just quoting various section of the
23 letter, quote, this is the second paragraph on page two,
24 quote,

25 "In addition, we are concerned

1 that the proposed revisions to the
2 enforcement policy do not fully
3 account for all mandated changes
4 under SB 2202, as well as any
5 relevant recommendation being
6 formulated by SB 2202 synthesis
7 group."

8 And so our recommendation just going through the
9 paragraph is that the revision to the enforcement policy
10 ought to be delayed until such time as the Board has the
11 opportunity to consider a recommendation from the
12 synthesis group.

13 And thirdly, which gets me involved with the
14 letter that you just mentioned you received from Rufus
15 Young, the task force is also concerned that the adoption
16 of the revision to the enforcement policy would appear to
17 be comparable to a rulemaking decision which is subject
18 to the rulemaking process since we are unsure how the
19 CIWMB differentiate between the following mechanism:
20 Guidelines, procedures, policies, or regulations.

21 The task force forwarded a letter dated April 19
22 to the Waste Board, and since we have not received any
23 response whatsoever. And the task force would have
24 appreciated receiving a response to that April 19th
25 letter.

1 Thank you.

2 BOARD CHAIR MOULTON-PATTERSON: Mr. Mohajer, I
3 have a question. So you don't feel, you know, I want to
4 make sure we get this answer to you, that you have not
5 been given a precise answer on the difference between
6 regulations, policies and procedures, is that correct?

7 MR. MOHAJER: That is correct.

8 BOARD CHAIR MOULTON-PATTERSON: And you still
9 don't feel you have? Because I'd really like to see, you
10 know, make sure you get a precise answer on this, and so
11 I would like to direct staff to get you one.

12 MR. MOHAJER: Representing the task force, L.A.
13 County Integrated Waste Management Task Force and Los
14 Angeles County, my response is we have not received any
15 response whatsoever.

16 BOARD CHAIR MOULTON-PATTERSON: Okay. Well,
17 we'll try and make sure you get that in a timely manner.

18 Thank you.

19 MR. MOHAJER: Thank you.

20 BOARD CHAIR MOULTON-PATTERSON: Yvonne Hunter.

21 MS. HUNTER: Madam Chair and members, Yvonne
22 Hunter with the League of California Cities. This is not
23 designed for tall people.

24 Just a few comments. To clarify the issue of
25 policy versus regulations; number one, I'm not an

1 attorney, and I'm not going to get in the middle of a
2 legal debate between Mr. Young and your staff on this.

3 What I do want to clarify and remind folks is
4 that when we worked with Senator Sher on SB 2202, the
5 League and CSAC, we were sponsors, we specifically did
6 not want the changes in the enforcement policy to have to
7 go through the OAL regulatory process.

8 That is a very lengthy process, and we needed to
9 have the enforcement policy, and frankly everything else
10 that 2202 asked the Board to do, we needed to have that
11 in effect soon. Specifically, as staff commented, so
12 that it could be considered as part of the biennial
13 review for the year 2000 report.

14 So that was a specific conscious decision on our
15 part, and we are very comfortable that it's not going
16 through the OAL process.

17 Now, whether it, whether other activities that
18 the Board does or doesn't do, I leave that to the
19 attorneys to debate, and perhaps that's a subject that
20 ought to be looked at.

21 SB 2202, as you remember, included a number of
22 changes in jurisdictions in the Board's interactions on
23 AB 939. It's not just the enforcement policy. And those
24 changes that SB 2202 put into law, I believe are
25 sprinkled through the solid waste and the Board

1 regulatory and policy landscape, including information in
2 the annual reports.

3 I just was clarifying with staff about that.

4 One of the provisions in 2202 is specifically authorizing
5 jurisdictions to provide the Board with information on
6 factors they consider may impact the accuracy of their
7 numbers. That direction and information is included in
8 the directions to local agencies on annual reports.

9 SB 2202 also includes the direction to create a
10 disposal reporting system task force; that's going on.
11 So all of that is being implemented in different places.

12 The question that I have consistently asked
13 about the enforcement guidelines policy, two questions
14 actually; have local governments been notified about the
15 proposed changes?

16 I mean I've looked at it, staff in fact gave me
17 an early copy to take a look at. And we had some lengthy
18 discussions and a number of the changes that I suggested
19 are, were put into the draft.

20 Were jurisdictions afforded the opportunity to
21 know that this was out there? And I'm satisfied that
22 they were notified. Perhaps there's a way we can improve
23 that, and we're happy to sit down and work with the Board
24 to enhance your notification system.

25 But the other question that I've consistently

1 asked is, and I asked it as recently as yesterday of some
2 local government folks, is there any substantive problem
3 that you have with the proposed policy, enforcement
4 policy that you haven't gotten fixed? Is there a problem
5 that you think needs to be addressed that hasn't been?

6 And to date nobody's identified anything. Now
7 perhaps there are problems out there and we don't know
8 about them. But I think for this one we need to separate
9 process issues from substantive problems.

10 And with that I'd like to thank the Board for
11 proceeding quickly in this area. Also the other item,
12 item number one -- or no, item number two, I'm sorry, the
13 compliance order process, that too was included in SB
14 2202, and the Board moved quickly along to get that into
15 their procedures.

16 And with that I'll be happy to answer any
17 questions.

18 BOARD CHAIR MOULTON-PATTERSON: Okay. Any
19 questions of Ms. Hunter? Thank you very much for your
20 comments.

21 I just had a question. When we communicate with
22 the cities and with the jurisdictions, do we usually send
23 a letter to the mayor and to the recycling coordinator
24 generally, or if there is a mayor or the president of the
25 Board if it's supervisors?

1 MR. SCHIAVO: It will depend on the issue and
2 how high a level the issue is. In this particular case
3 we sent out not only, you know, there's the typical Board
4 noticing for the last four Board meetings and briefings,
5 but we also sent out through our e-mail list server a
6 special notice on two occasions as well. But I don't
7 recall that going to the mayors for this issue.

8 BOARD CHAIR MOULTON-PATTERSON: Okay. Thank
9 you. Oh, we also have one more speaker that came in a
10 little late. Paul Yoder.

11 MR. YODER: Thank you, Madam Chair, other
12 members. Just very quickly I want to echo one comment
13 made earlier by L.A. County specifically with respect to
14 incorporating the recommendations of the 2202 group
15 possibly into any revisions to the enforcement policy.

16 I respect staff's representation that the 2202
17 group's recommendations appear consistent with what
18 you're taking up today; but with all due respect to
19 staff, I think local government would like to see, local
20 government that I'm aware of would like to see the Board
21 confirm that formally. And I think that would give some
22 other folks that I know a little bit more comfort.

23 So thank you, Madam Chair.

24 BOARD MEMBER JONES: Madam Chair, a question.

25 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.

1 BOARD MEMBER JONES: I guess it would go to Mr.
2 Yoder's issue, but we've talked about it I think three
3 times. We have the ability to revise this again based on
4 any input in 2202 that is different or that needs to be
5 included. We're not, we're not stuck with just this one
6 revision, we can revise it again. And I know that's been
7 part of the dialogue because this thing's been continued
8 four times, three times.

9 MR. YODER: I understand that.

10 BOARD MEMBER JONES: So, but I know that we
11 brought that up, and I think that goes to what you want,
12 Mr. Yoder. That while we revise it today and take care
13 of this problem, if other issues come up through SB 2202
14 that need to be taken into consideration in this policy,
15 we have the ability to bring it back and yet revise it
16 again.

17 MR. YODER: Just as long as, Mr. Jones, as the
18 caboose doesn't get too far behind the train.

19 BOARD MEMBER JONES: Never does.

20 MR. YODER: Okay.

21 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
22 Yoder.

23 MR. YODER: Thank you.

24 BOARD CHAIR MOULTON-PATTERSON: Board members,
25 questions? Comments? Motions?

1 BOARD MEMBER JONES: Madam Chair.

2 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.

3 BOARD MEMBER JONES: I'll move adoption of

4 Resolution 2001-240, Consideration of the Staff

5 Recommendation on Source Reduction and Recycling Element

6 Implementation and Potential Revisions to the CIWMP

7 Enforcement Policy, Part two.

8 BOARD MEMBER MEDINA: Second.

9 BOARD CHAIR MOULTON-PATTERSON: Okay. Motion by

10 Mr. Jones, seconded by Mr. Medina to approve Resolution

11 2001-240.

12 Please call the roll.

13 BOARD SECRETARY VILLA: Eaton?

14 BOARD MEMBER EATON: Aye.

15 BOARD SECRETARY VILLA: Jones?

16 BOARD MEMBER JONES: Aye.

17 BOARD SECRETARY VILLA: Medina?

18 BOARD MEMBER MEDINA: Aye.

19 BOARD SECRETARY VILLA: Paparian?

20 BOARD MEMBER PAPARIAN: Aye.

21 BOARD SECRETARY VILLA: Moulton-Patterson?

22 BOARD CHAIR MOULTON-PATTERSON: Aye.

23 Okay. Motion approved.

24 Continued item, number two.

25 MR. SCHIAVO: Okay. Item number two is

1 Consideration of Staff Recommendation on the 1999-2000
2 Biennial Review Process.

3 And Catherine Cardozo will also make this
4 presentation.

5 BOARD CHAIR MOULTON-PATTERSON: Ms. Cardozo.

6 MS. CARDOZO: Good morning, Madam Chair, Board
7 members.

8 Agenda item two is staff's proposal for
9 processing the '99-2000 biennial reviews. This is
10 essentially the same process the Board has used the past
11 four years while conducting the previous biennial
12 reviews, but with minor revisions to reflect subsequent
13 statutory changes in Senate Bills 2202 and 1066, and the
14 corresponding revisions to the CIWMP enforcement policy
15 was discussed.

16 Board staff will follow the CIWMP enforcement
17 policy for conducting its evaluations, as well as the
18 Board adopted procedures for notifying jurisdictions of
19 any additional information required for an annual report
20 within 120 days from receipt, and for issuing compliance
21 orders as required by SB 2202 and adopted by the Board in
22 January, 2001.

23 The 120 day preliminary evaluation will identify
24 any information gaps in either the jurisdiction's claimed
25 diversion rate or program implementation information.

1 In addition, the PRC that requires, the section
2 in the PRC that requires 120 day preliminary evaluation
3 continues in subsection E(2) stating that the 120 day
4 notification limit does not prohibit the Board from
5 making additional requests for information in a timely
6 manner, and also requires a jurisdiction receiving such a
7 request to respond in a timely manner.

8 As staff has done for the review of the
9 jurisdiction's 1999 biennial reports, staff will continue
10 to send notification letters to jurisdictions of their
11 preliminary findings within 120 days of receipt of an
12 annual report.

13 I would like to mention here that one of the
14 reasons for the legislative change to require 120 day
15 review and notification was jurisdiction's frustration
16 with the lag time between submitting their '95 and '96
17 annual reports, and the Board's considering them as
18 biennial reviews starting in May of '98.

19 There were many reasons for the delay, but
20 suffice it to say that, to date, staff has completed its
21 review of nearly all the 1999 annual reports, and is
22 ready to begin processing the 2000 annual reports when
23 they arrive as early as the September 1 due date.

24 Staff is proposing to present the biennial
25 review findings as streamlined agenda items similar to

1 those used for the previous biennial review cycles.

2 Full agenda items will be prepared, however, for
3 individual jurisdictions requesting 1066 extensions,
4 rural reductions, new base years, base year corrections,
5 or other proposed changes from the Board's default
6 diversion rate.

7 Staff has received public comments from two city
8 representatives on this item:

9 One, in support of the proposed biennial review
10 procedures;

11 And a second requesting that the item be delayed
12 until all pertinent recommendations made by the SB 2202
13 working group are either implemented or adequately
14 discussed in a public meeting.

15 Staff would like to respond by saying that where
16 the SB 2202 working group's coincided with the BR
17 process, that is biennial review, those recommendations
18 have been incorporated into the policies. For example,
19 the emphasis on program implementation.

20 Other proposed recommendations will require
21 legislative changes and have therefore not been
22 incorporated into the enforcement policy or the biennial
23 review procedures at this time.

24 Again, as I mentioned in agenda item number one,
25 the 120 day review slash notification period required in

1 SB 2202 will commence upon the Board's receipt of a
2 jurisdiction's 2000 annual report.

3 That concludes my presentation. Are there any
4 questions for staff?

5 BOARD CHAIR MOULTON-PATTERSON: Questions for
6 Ms. Cardozo?

7 BOARD MEMBER EATON: I have one.

8 BOARD CHAIR MOULTON-PATTERSON: Mr. Eaton.

9 BOARD MEMBER EATON: For the record, when is
10 your hope that you'll have them all complete?

11 MR. SCHIAVO: Part of that will be a product of
12 when they're submitted to us. Historically we've had a
13 lot of them come in towards the due date, you know, in
14 previous years, August 1st. So we'd anticipate about
15 getting maybe half of them in, and then pretty soon
16 though start slowing down. So it's predicated on, and we
17 start generating letters out to the jurisdictions based
18 on when they're submitted to us, and it's been up to a
19 year late in some cases, even with the submittal of our
20 letters.

21 After that we have the 120 days to turn them
22 around once they get into us. But the way 2202 is stated
23 is that jurisdictions can get back to us with the
24 information as soon as possible, or something to that
25 effect.

1 So there is no timeline for them to respond back
2 to us. So it's hard to anticipate when we can turn it
3 all around. It's predicated on some external factors as
4 well.

5 BOARD MEMBER EATON: So are we going to have
6 problems where there is this disagreement? So 2202 is
7 skewed in favor of someone who didn't submit information,
8 we're required to be under 120 days but they're not
9 required to respond to us within a certain timeframe, so
10 that they could actually extend it out to over a year?

11 MR. SCHIAVO: In most cases jurisdictions are
12 very responsive, in some cases they have dragged the
13 process out. So, that's typically the exception.

14 BOARD MEMBER EATON: Madam Chair, I think we
15 need to get some update, perhaps maybe in October, of how
16 many have come in and what have you.

17 When I first came to the Board, in many cases
18 one of the main complaints from local government was the
19 fact that we hadn't done X, Y, or Z in a year and a half
20 or two years, and by that time everyone had forgotten
21 pretty much what everyone was fighting about at that
22 time.

23 And so I think that at least this time with all
24 of the changes and all of the other kinds of things, that
25 we at least need some sort of idea as to what's in the

1 hopper, do we need to do additional staff resources to
2 review them, those kinds of things that are just
3 necessary for the administration; especially since if for
4 any reason the previous bill, whether bill 1066 should
5 ever come into play, we'll have a whole separate process
6 by which staff has to then begin a process by applying
7 for an extension. So there will be a lot of activity.
8 So at least we can manage what their workload may or may
9 not be.

10 And so at least in October an update of what's
11 in, what's not in, so that at least we as a Board are on
12 record as being responsive. And if it's the local
13 jurisdictions or anyone else that's not being responsive,
14 then at least there's a record that we as a Board have
15 done all we could to meet our statutory obligations.

16 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
17 Eaton. I certainly agree.

18 So if you could come back to us with a report on
19 the status in October.

20 And we do have a speaker, Mike Mohajer.

21 MR. MOHAJER: Good morning, Madam Chair, member
22 of the Board. And again, for the, for the record, my
23 name is Mike Mohajer and I represent L.A. County
24 Integrated Waste Management Task Force and myself.

25 Madam Chair, this follows up to another letter

1 that we handed out at the meeting in Long Beach in
2 reference to item 21, and the letter was dated July 24th.
3 So I'm just going to be quoting from what it was
4 indicated in that letter.

5 Starting on the second paragraph it reads.

6 "As you may recall, at its
7 January 23-24, 2001 meeting, the
8 CIWMB considered a staff
9 recommendation on how to proceed with
10 the specific procedures for review of
11 annual reports and assurance of
12 proposed compliance order, agenda
13 item thirteen, January, 2001."

14 To assist the CIWMB in developing consistent
15 procedures, on January 22nd, 2001 the task force
16 submitted a letter to the CIWMB outlining our comments
17 regarding this issue, copy enclosed.

18 Our primary comments was our belief that the
19 CIWMB staff report misinterpreted the statute regarding
20 annual reporting requirements. Mainly, that CIWMB must
21 request additional annual report information no later
22 than 120 days from receiving an annual report from a
23 jurisdiction and not, as the staff report claims,
24 conducting a cursory or preliminary evaluation on the
25 completeness of an annual report.

1 Prior to the CIWMB discussing this agenda item,
2 we also discussed our concern with CIWMB staff. CIWM
3 staff agreed that our concerns were valid, and thus CIWMB
4 staff modified their verbal presentations to the CIWMB to
5 allow for these corrections.

6 Subsequently, as reflected in our official
7 meeting transcript, and these are specifically what the
8 transcript of June -- I mean January, 2001, on pages 146
9 and 147 of the official transcript, the CIWMB approved
10 the agenda item as verbally presented by the staff.

11 While we believe that the issue was
12 satisfactorily resolved in January, the above changes
13 were not incorporated into the proposal now being
14 considered. The page 21-4, now for this item would be
15 page 2-4 of the staff report, continues to maintain that
16 quote,

17 "The Board staff will conduct
18 preliminary evaluation within 120
19 days of the receipt of a
20 jurisdiction's 2000 annual report to
21 determine each jurisdiction's
22 diversion rate achievement and level
23 of program implementation."

24 So with that, says the letter conclude, that a
25 staff report ought to be revised to include what was

1 discussed in the January, 2001 meeting.

2 BOARD CHAIR MOULTON-PATTERSON: Okay. Thank
3 you, Mr. Mohajer.

4 Mr. Jones.

5 BOARD MEMBER JONES: Madam Chair, I'm going to
6 move this resolution. I happen to think our staff does a
7 good job of letting everybody know and helping them make
8 everybody aware of all the issues.

9 I'm going to move adoption of Resolution
10 2001-241 Consideration of Staff Recommendation of the
11 1999/2000 Biennial Review Process.

12 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
13 Jones.

14 BOARD MEMBER MEDINA: Second.

15 BOARD CHAIR MOULTON-PATTERSON: And Mr. Medina
16 seconds. Mr. Jones moves Resolution 2001-241.

17 Please call the roll.

18 BOARD SECRETARY VILLA: Eaton?

19 BOARD MEMBER EATON: Aye.

20 BOARD SECRETARY VILLA: Jones?

21 BOARD MEMBER JONES: Aye.

22 BOARD SECRETARY VILLA: Medina?

23 BOARD MEMBER MEDINA: Aye.

24 BOARD SECRETARY VILLA: Paparian?

25 BOARD MEMBER PAPARIAN: Aye.

1 BOARD SECRETARY VILLA: Moulton-Patterson?

2 BOARD CHAIR MOULTON-PATTERSON: Aye.

3 BOARD MEMBER JONES: Madam Chair.

4 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.

5 BOARD MEMBER JONES: Just a quick question on
6 this. Because of the inert issue that we had down in
7 Long Beach last week, we need to -- and I don't know if
8 it needs to be a discussion item or part of this, I think
9 we've had the discussion items before. But when Caltrans
10 goes through Orange County and doesn't listen to what
11 Orange County elected officials are saying, and takes
12 that to a facility that is disposal; the impact on a
13 jurisdiction that was at 50 percent with legitimate
14 programs, I mean there was not a, there is not a program
15 that isn't being done in this one jurisdiction, there
16 just isn't, but it's taken them from 50 to 44 percent.
17 That, those people now have staff, elected officials,
18 everybody angry at them when, in fact, nobody had any,
19 any control over the direction of that highway.

20 We've had these discussions before, I know we
21 have, I don't want to burden staff, but I think we really
22 need to look at the fairness of that, and at least have a
23 discussion, Madam Chair, or something that can start
24 outlining some alternatives.

25 I don't want to let people off the hook. We

1 fight like heck to make sure that jurisdictions don't get
2 this, this free diversion credit by ripping up a road and
3 taking it into a place and calling it diversion. We
4 fight that because of fairness to all those jurisdictions
5 that are doing real programs.

6 And yet the other side of that is that you've
7 got jurisdictions that are doing real programs and
8 funding it through ratepayer fees, then something out of
9 their control happens and all of the sudden they're not
10 in compliance.

11 So we really have to look at a mechanism. And I
12 know they can redo their base year, but that's going to
13 cost them a lot of money, and that's not the answer. I
14 mean elected officials that have put their, their,
15 themselves on the line to fund programs, and those
16 citizens have responded, and the haulers have responded,
17 need to be, we need, not rewarded, but at least
18 acknowledged that that's right.

19 So I don't know exactly how we are going to do
20 this, so I'm throwing it out as a suggestion. But I
21 think it's paramount to, especially in the biennial
22 review process, to ruin somebody's efforts and to ruin
23 somebody's reputation, because a road that ended up
24 somewhere doesn't go to what we're dealing with.

25 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.

1 Jones. And I think that would be a great discussion
2 item, possibly for one of our briefing days.

3 How soon could we have that, Mr. Schiavo?

4 MR. SCHIAVO: Internally we're working on it
5 now. We had discussions last week with the jurisdiction
6 in question, and I agree there's some real concerns
7 there, especially because it's almost an exactly one year
8 project, which has created some other issues as well in a
9 disposal based system. And I do think it's an important
10 issue that has to be addressed because they are
11 implementing programs that are very legitimate in what
12 they're doing.

13 So maybe we could, we could probably discuss the
14 details of the issue, and by that time we should have
15 some kind of potential solutions, I would hope, by the
16 next Board briefing because -- yeah, it will be later in
17 the schedule, so that would be fine.

18 BOARD CHAIR MOULTON-PATTERSON: Okay. Thank
19 you, I appreciate that, I'm sure Mr. Jones would.

20 We're on item number three. Financial
21 assurances.

22 MS. NAUMAN: Good morning, Madam Chair and Board
23 members, Julie Nauman, Permitting and Enforcement
24 Division.

25 Item number three is Consideration of Adoption

1 of or Request for Additional Direction Regarding Proposed
2 Regulations and Standards for Acceptance of Insurance as
3 a Financial Assurance Demonstration.

4 The Board may recall that the last time you saw
5 this item was at our out of town Board meeting in May.
6 At that time the package was before you in the context of
7 the public hearing on the proposed regulation package
8 which is a step in the process that follows the
9 forty-five day review and comment period that had been
10 conducted.

11 During that Board meeting you directed staff to
12 go out for another thirty day public review and comment
13 period, opening up the package for all issues.

14 You also directed us at that time to engage in
15 discussions with the State of Vermont as well as
16 continued discussions with the stakeholders.

17 That comment period that you directed at that
18 time closed on July 2nd of this year, and that, this item
19 was prepared and ready for your consideration at the July
20 Board meeting. The item was not taken up at the July
21 Board meeting, it was continued to today.

22 So the item before you today will be covering a
23 couple of different things.

24 One, we will be reviewing with you the comments
25 that we received during the latest thirty day review and

1 comment period.

2 We'll also be updating you on the discussions
3 we've had with the various stakeholders.

4 We'll be reviewing the options that staff has
5 developed in the context of the agenda item, and as a
6 result of discussions with the stakeholders and other
7 interested parties.

8 And then staff will present their
9 recommendation.

10 So with that as a setting I'll turn the
11 presentation over to Richard Castle.

12 MR. CASTLE: Good morning, Madam Chair, Board
13 members. My name is Richard Castle, I work in the
14 Board's Financial Assurances Section.

15 This item is for your consideration regarding
16 proposed regulations amending standards for acceptance of
17 insurance as a financial assurance demonstration in
18 California.

19 As we've discussed in prior Board meetings,
20 there are two parts to the rulemaking package:

21 Part one is a definition of captive insurance
22 and its proposed exclusion for financial assurance
23 demonstrations in California.

24 Part two is an amendment to clarify the timing
25 and manner by which closure insurance coverage is

1 required to resolve claims made by the Board when acting
2 in its capacity and authority over landfill operations.

3 As the second part appears to be less
4 controversial, let's begin with that. For the rulemaking
5 I would like to briefly summarize the comments received
6 and the responses prepared by staff.

7 A commenter is concerned that the amendment
8 might require payment based on facts that would not
9 otherwise trigger the policy.

10 Staff response to that is that we've met with
11 industry representatives to clarify the situations under
12 which the Board might make a claim on any of these
13 insurance policies. The proposed regulations were
14 amended based on the comments made by insurance industry
15 representatives during this meeting. The Board currently
16 is capable of making a claim against the insurance
17 coverage for costs up to the entire face amount of the
18 policy once the Board has determined that the operator
19 has failed to perform as required.

20 The proposed regulations only clarify the
21 current order of the Board.

22 One commenter stated that the Board is expanding
23 the definition of insurance beyond that in the insurance
24 code and, as such, is beyond the authority of the Board.

25 The response is that staff spoke with insurance

1 industry representatives prior to the proposed amendment,
2 and with this commenter after receiving the written
3 comment. The discussion clarified the interpretation of
4 the commenter and the intent of the proposed regulation.

5 In brief, the proposed regulation does not
6 redefine the definition of insurance. It does clarify
7 the current authority of the Board to make claims against
8 these insurance policies after the Board determines that
9 an operator has failed to perform as required by the
10 regulations, and the Board's authority under Public
11 Resources Code to regulate landfill operations and
12 require financial assurance demonstrations.

13 One commenter stated that the proposed revision
14 brings into question the process by which the other
15 provisions of this regulation allow for claims against
16 the policy when needed.

17 Staff response is that the proposed regulation
18 does not impact the provisions currently in place
19 regarding access to the insurance coverage. The proposal
20 only clarifies that the Board is the authority empowered
21 to direct actions of the facilities. And under the
22 Board's current authority, to order closure of a
23 facility. If an operator fails to perform, the Board has
24 the authority to contract for the insured activity and
25 demand payment from the policy to pay for the insured

1 activities.

2 These comments represent the extent of the
3 comments received regarding Section 22248(H), and no
4 additional amendments are proposed as a result of these
5 comments.

6 The first part of the package which was the
7 captive insurance, is the proposed exclusion of captive
8 assurance as a financial demonstration insurance for the
9 Board.

10 And let me read through the comments on these
11 also.

12 All the comments specific to the proposed
13 regulation are to eliminate the proposed provision which
14 will exclude the use of captive insurance as a financial
15 assurance demonstration to the Board.

16 One commenter made extensive additional comments
17 regarding the initial statement of reasons prepared for
18 the proposed regulations.

19 Staff's response to the comments of the
20 inadequacy of the initial statement of reasons is that
21 all issues raised regarding the statement will be
22 responded to in the final statement of reasons for the
23 regulations, and it does not hamper the rulemaking
24 process.

25 Two commenters stated that an exclusion of

1 captive insurance in California will have a ripple effect
2 throughout the nation as other states will then ban the
3 use of captive insurance for this specific financial
4 demonstration.

5 Staff's response is that the Board is not
6 creating any new standards for the industry to meet. The
7 standard for this financial assurance demonstration is
8 the federal requirements as set out by U.S. EPA for this
9 financial assurance mechanism which is closure insurance.

10 The same two commenters further claim that the
11 financial assurance industry is not capable of responding
12 to this large a demand in a short timeframe.

13 Staff's response is that all operators have the
14 same financial assurance options available to them, and
15 that this entire exposure does not need to be placed in a
16 single financial market.

17 Further, no evidence of such a shortcoming of
18 the financial insurance provisions -- providers
19 throughout the nation has been presented to support this
20 allegation.

21 The remainder of the comments are not specific
22 to the regulatory language nor the statement of reasons
23 in rulemaking documents. The comments regard the
24 underlying issues which have been discussed and presented
25 to the Board.

1 The response is that the comments do not warrant
2 further amendments to the regulations or the rulemaking
3 documents.

4 That's the extent of the comments. But we've
5 had a number of meetings and I'd like to go through the
6 chronology of what's happened there.

7 Since the last time this item was heard by the
8 Board, staff met with Mr. Ed Howard, who is special
9 counsel for Senator Figueroa. In this meeting we
10 discussed the concerns that the coverage from pure
11 captive insurers cannot meet the federal requirements for
12 insurance from Title 40 of the Code of Federal
13 Regulations which is Section 258.74(d).

14 This inability is because the pure captives are
15 not licensed to provide coverage to uncontrolled,
16 unaffiliated companies. This is the issue of
17 transferability or assignability of the policies.

18 We also discussed the apparent conflict
19 internally within Public Resources Code Section 43601
20 which is the change made to Public Resources Code by
21 Senator Figueroa when she was an Assemblywoman, wherein
22 the insurance coverage from an insurer established by a
23 solid waste facility operator must meet all the
24 requirements of Section 258.74(d) and must also only
25 provide a form of self-insurance to the operator that

1 established the company, and not provide coverage to
2 other parties.

3 As a result of this discussion, staff continued
4 to examine potential other forms of captive insurance for
5 the potential ability to meet the federal requirement
6 that insurance be assignable to successor owners or
7 operators.

8 The staff also contacted the State of Vermont
9 regarding the issue of assignability of captive insurance
10 policies, the type of insurance coverage provided under
11 these captive insurance policies, and the level of
12 reserves required of Vermont licensed captive insurers.

13 The representatives from Vermont declined to
14 have a telephone conversation with Board staff; instead,
15 they forwarded a response letter prepared for U.S. EPA on
16 some of the same core issues. This response letter is
17 attachment four of the agenda item.

18 Specifically within that Vermont identified, we
19 had questioned them regarding the reserves on the policy
20 that we have seen where the company was maintaining zero
21 dollars in reserves. Vermont identified that zero
22 dollars in reserves is considered acceptable and adequate
23 for this coverage because their actuarial study found no
24 quantifiable risk. They justified this lack of risk for
25 the captive insurer because the operator is the primary

1 source of funds for these activities.

2 And staff would like to point out that when the
3 operator or the insured is the primary source of funds
4 for activities, this is generally known as surety
5 coverage. The insurer is merely guaranteeing that the
6 operator will do as they're supposed to do.

7 This is in direct conflict with the federal
8 insurance provisions that require the insurer must be
9 responsible for paying for costs once covered activities
10 begin.

11 Vermont also clarified that Vermont does not
12 permit assignment of current captive insurer policies.
13 That is a quote from their letter.

14 And, in fact, staff have discussed with the
15 Vermont, our counterparts in their Solid Waste
16 Department, and Vermont has identified that they do not
17 allow the use of captive insurance for financial
18 assurances for solid waste facilities within the State of
19 Vermont. So we're not doing anything they don't already
20 do.

21 Staff discussed this response letter from
22 Vermont with U.S. EPA to determine the possible action
23 U.S. EPA may take. These discussions led us to believe
24 that the proposed guidance may be floated for comment by
25 the end of the year. It would then be sometime following

1 receipt of comments on the proposed guidance before any
2 final guidance or rulemaking might be forthcoming.

3 In our discussions it is important to note that
4 U.S. EPA does not discount the Office of Inspector
5 General's audit report findings. The captive insurance
6 policies reviewed for the audit report do not meet the
7 intent or requirement of RCRA financial assurance
8 requirements. The guidance yet to be developed is just
9 what is U.S. EPA going to do about the situation.

10 At the recent ATSWMO meeting, our staff was
11 there and they discussed this issue with U.S. EPA. And
12 the indication is that while they're open to discussion,
13 they don't see any change in the near future.

14 Staff have also met with representatives from
15 both Allied Waste Industries and Waste Management to
16 further discuss possible alternatives to the regulations
17 that might protect California and still leave the
18 potential for future consideration of captive insurance.

19 During this meeting a number of options were
20 discussed, including taking no action;

21 Making no additional changes to the regs and
22 just asking you to adopt what's been noticed at the last
23 fifteen day notice;

24 And we have additional proposed amendments that
25 were discussed.

1 The outcome of the meeting is the additional
2 proposed language that should have been passed to you
3 just recently, and it's been made available in the back
4 of the room also. And we have it on Powerpoint if we can
5 make the Powerpoint work.

6 Okay. There. The changes are on the screen
7 there that we're proposing at this time. And that is to
8 take out the exclusion for captive insurance which is
9 captive insurance is not an acceptable mechanism for any
10 financial assurance demonstration to the Board.

11 So that, what is in blue on the screen would be
12 stricken. That was, that's language that we've already
13 noticed each time that the regs have gone out.

14 And then the next page.

15 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.

16 BOARD MEMBER JONES: Richard.

17 MR. CASTLE: Yes.

18 BOARD MEMBER JONES: That, that language is not
19 in existing --

20 MR. CASTLE: No, that's what we propose in each
21 of the rulemaking so far.

22 BOARD MEMBER JONES: Right. So it's not in the
23 existing regs?

24 MR. CASTLE: It's not in the existing regs, it's
25 only what we proposed each time.

1 MS. NAUMAN: This is what has been the staff
2 proposal. This is the so-called absolute ban. And what
3 Richard is explaining is that staff is now coming forward
4 with a different recommendation, and we are proposing
5 that we not adopt what is now in the proposed
6 regulations, do not adopt the absolute ban. Instead, we
7 have some alternative language.

8 So I hope that that's clear. This is the ban,
9 this is the original staff proposal, and staff is
10 suggesting that we not consider this as a recommendation,
11 and use this additional language.

12 BOARD CHAIR MOULTON-PATTERSON: Thank you.

13 MR. CASTLE: So if we were to remove this it
14 would go back to the current regulations which are in our
15 regulations right now without saying captive insurance is
16 not acceptable.

17 So the change would be to insert language in
18 Section 22248, which is the insurance requirements that
19 we currently have in place. Currently we say, "The
20 issuer of the insurance policy shall be an insurer that,
21 at a minimum," and we would include the phrase,
22 "including a captive insurance company," add that in
23 there.

24 The operators have identified that they want to
25 be considered as insurance companies, and we're making it

1 clear that the requirements under the federal
2 requirements and under our state requirements would be
3 the same. So we would include them under our insurance
4 requirements.

5 And then there's a section A and a section B,
6 whether they want to be admitted or whether they want to
7 be identified on what's called the LESLI list which is
8 eligible to provide insurance as an excess or surplus
9 lines insurer in California.

10 And then we have one additional change, because
11 during our discussion last week with Allied and with
12 Waste Management, the question was raised about what does
13 this insurance coverage by the Feds really mean, and what
14 do we really mean by the insurance coverage? Because
15 we've had this ongoing discussion regarding surety
16 coverage versus closure insurance coverage.

17 Staff believe it's very clear within the federal
18 requirements that closure insurance, the insurer is
19 responsible for closing the facility, for paying for the
20 costs of closing the facility. And within the rulemaking
21 for Subtitle D there's very specific language that says
22 the policy, that the language, and this is not a quote
23 from it, but the language is that the insurance policy
24 transfers the financial risk from the insured to the
25 insurer.

1 And we made that clear during our discussion
2 with Allied and Waste Mangement that we were aware of
3 that, and that that's a very clear distinction between
4 the surety and the insurance coverage.

5 And we felt it appropriate at this point, since
6 this has actually come up with some commercial policies
7 we've had where we've had to have some discussions with
8 the commercial insurers to resubmit their coverage to
9 make sure that they were not providing us a guarantee of
10 the operator, but that they were providing insurance
11 coverage that the insurer would step forward and close
12 the facility.

13 So we are suggesting adding this additional
14 language, "The policy shall transfer the financial risk
15 of closure, post closure maintenance, or corrective
16 action costs from the operator to the insurer."

17 And then -- if I can find my place in the notes
18 here.

19 We've also discussed the issues that have been
20 raised regarding the California Department of Insurance
21 and their ability and capability to review captive
22 insurers within California. We had this discussion,
23 we've had, our legal office has had a number of
24 discussions, and we discussed again just yesterday
25 afternoon with a Mr. James Holmes of the Department of

1 Insurance, who is one of the responsible attorneys in
2 their captive insurance section.

3 And the California Department of Insurance
4 definitely understands captive insurers. They would
5 definitely license them if they wanted to come forward.
6 They would review them as a captive insurer.

7 We asked Mr. Holmes specifically whether they
8 would require them to as a commercial insurer and provide
9 coverage to other parties.

10 Mr. Holmes was very clear that, no, they would
11 not expect them to provide coverage to other parties.
12 They would look at the exposure of the captive insurer,
13 and under the California Department of Insurance
14 reasoning determine what an adequate level of
15 capitalization and risk retention that the insurer would
16 have to maintain.

17 They would also be willing to look at a captive
18 insurer as a authorized surplus lines provider, which is
19 the section B within our regulations. And actually that
20 would probably be a more stringent requirement,
21 according to Mr. Holmes, that there would probably be a
22 higher financial standard for them to meet in order to be
23 listed on the LESLI list as eligible to provide coverage
24 as a surplus for excess lines insurer.

25 This basically ends my presentation. But I want

1 to make it clear that you have, obviously, a number of
2 options in front of you.

3 You can adopt what we've proposed in the past
4 and already noticed and received comments on, which is
5 the complete exclusion of captive insurance.

6 We are proposing at this time this additional
7 language. If you choose to adopt this new change today,
8 what you would be doing is directing us to go out for
9 another fifteen day notice for additional comments, and
10 we would bring this back to you again next month for,
11 hopefully for adoption at that time.

12 If you want us to make additional changes yet,
13 that is also an option for you. If you look at this and
14 you don't like this wording or if you just want us to go
15 back and work on it some more, that's fine.

16 At this point we're, we are requesting that you
17 move to direct us to make an additional fifteen day
18 notice with the language that you have in front of you so
19 we can go for public comment on that language and
20 hopefully bring that to you during your September Board
21 meeting for adoption.

22 MS. NAUMAN: Just a point of correction. It
23 would probably not be the September Board meeting because
24 the Board meeting in September is very early. So we
25 would bring it to the next available Board meeting after

1 the conclusion of the comment period.

2 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
3 Castle.

4 Questions, Board members, before we hear our one
5 speaker? Okay.

6 Thank you, Mr. Castle.

7 Chuck White, Waste Management.

8 MR. WHITE: Thank you, Madam Chair, members of
9 the Board. Chuck White representing Waste Management.

10 I provided the staff with a couple of handouts
11 for you. I don't know if you have had them distributed
12 to you, but one is entitled, "Options for CIWMB Captive
13 Insurance Regulations," and the other one --

14 BOARD MEMBER EATON: We have that.

15 MR. WHITE: And the other one is just simply
16 Public Resources Code Section 43601. And I'll make
17 reference to those as I proceed.

18 We had really hoped to be able to come today to
19 this Board meeting, hopefully if not arm in arm with
20 staff, at least with a consistent approach. We met up to
21 as late as last Thursday, and had discussions Friday and
22 even as late as yesterday. Unfortunately, we have not
23 been able to come to absolute and complete agreement.

24 I would like to review for you the options that
25 we believe to be the ones that are before you today.

1 There may be others but these are ones that seem to be
2 the most obvious.

3 Number one in my handout is simply you could go
4 ahead today and adopt the current language which we
5 believe would be an outright prohibition on the use of
6 captive insurance.

7 And for the various reasons that I've raised to
8 you in public testimony and in writing, we would
9 certainly object to that.

10 Our preferred option would be to simply drop the
11 language entirely that's in that subdivision B of 22228
12 for, again, the variety of reasons that we have put out
13 in writing and spoken to you previously; the primary one
14 being that there isn't really a problem, no one is using
15 it, there's no need to prohibit captive insurance right
16 now in California for solid waste facilities.

17 However, as we left it on Thursday of last week,
18 we would be willing, if you felt there was a need to
19 continue to say something in this rulemaking package with
20 respect to captive insurance that I have listed an option
21 three which would be acceptable to us, not our preferred,
22 but would be acceptable, which would simply say that,
23 "Captive insurance may be considered an acceptable
24 mechanism, but only if compliance is demonstrated with
25 all applicable provisions of federal and state statutes

1 and regulations."

2 And you've just heard your staff say, and they
3 have repeated previously, that they're not interested in
4 creating any new law in this area, they're just simply
5 interpreting existing federal and state law.

6 For example, interpreting existing federal
7 regulations with respect to assignability. Interpreting
8 existing regulations with respect to California insurance
9 law.

10 If that's, in fact, the case, that they're not
11 interested in creating any new law in this area, then we
12 don't see any reason why this proposal should not be
13 perfectly acceptable because it would for the first time
14 in one place in one section make it very clear that you
15 cannot use captive insurance unless you're in compliance
16 with all applicable provisions of federal and state
17 regulations.

18 So we would urge that as another possible option
19 for you to consider.

20 The last option before you is the staff
21 proposal. We basically saw it for the first time on, no,
22 we did the discussion on Thursday, saw it in writing, at
23 least described to us on Friday, and saw it for the first
24 time yesterday.

25 We still have a number of concerns about that

1 because we believe basically instead of being an outright
2 prohibition on captive insurance, it would, in a sense,
3 be a de facto prohibition on captive insurance. And it
4 would, we believe, would be contrary to the intent of
5 Senate -- now Senator Figueroa's AB 715 of a couple of
6 years ago.

7 So really we believe there are five reasons why
8 we would ask you to not adopt the proposal that's before
9 you as was just presented by your staff, and return to
10 either options two or three that I've listed for you in
11 the handout.

12 We have a disagreement, obviously, with whether
13 or not CDI is set up, the California Department of
14 Insurance, to approve a pure captive.

15 We believe California insurance law in its own
16 does not require a pure captive to be licensed or
17 approved by CDI, it's your regulations that would require
18 that. And for all practical purposes a pure captive, we
19 believe, would not be able to be approved by the
20 California Department of Insurance unless they set up
21 their operations in a manner that was consistent with a
22 commercial insurance company that was transacting the
23 business of an insurance in California.

24 Unfortunately, we have not been able to have a
25 joint discussion with CDI and your staff; it's always

1 been, we have our separate discussions with CDI, and your
2 staff has their separate discussions with CDI, and we
3 always seem to come back with two separate stories.

4 We'd be pleased to continue to work with the
5 staff and CDI to further clarify this issue, but as it
6 stands right now we have, we believe we have a
7 disagreement.

8 So number one is we don't believe CDI is set up
9 to approve pure captives in California.

10 Number two, there is the AB 714 which amended
11 Section 43601. And this was done after the Board had
12 previously adopted regulations that required either a
13 licensure or approval by CDI of a captive insurance.

14 Then Assemblywoman Figueroa said, well she
15 wanted to provide this Board with the option, not the
16 mandate, but the option to consider approval of pure
17 captive insurance companies without having to go to the
18 California Department of Insurance.

19 So I've highlighted on the second page of this
20 handout in bold lettering the language taht she added to
21 43601 that would specifically allow this Board to approve
22 a captive insurance without going to the Department of
23 Insurance. And we would ask this Board to continue to
24 provide for that opportunity. Not that you have to
25 approve it, but to continue to provide for that

1 opportunity to consider a pure captive on its merits.

2 Number three, it's related to number two in a
3 sense that it takes us back, the staff's proposal which
4 they have just presented to you, takes us back to the
5 previous set of regulations that led rise to the Figueroa
6 legislation in the first place. And I would just as soon
7 try to break out of this "do hoop," if you will, and try
8 to make positive steps forward.

9 Our fourth reason would be that there's no
10 problem. No one is using captive insurance today in
11 California for solid waste facilities. And Allied and
12 Waste Management are the only two solid waste companies
13 that I believe currently have captives, and so there's
14 not really a problem that is being addressed by adopting
15 further language in your regulations conditioning or
16 restricting the use of captive insurance, because no one
17 is using it.

18 And then fifth, captive insurance as regulated
19 by the State of Vermont, has a virtually perfect track
20 record. Unlike many other mechanisms that you have
21 before you in your regulations, there has never been a
22 failure of a Vermont regulated pure captive to meet its
23 financial obligations in the fifteen or so years that the
24 State of Vermont has been regulating these kinds of
25 insurance mechanisms.

1 So we believe that it is ironic that the one
2 financial insurance mechanism that has the most perfect
3 track record of performance is the one that seems to be
4 subject to these continued restrictions and limitations.

5 In view of these reasons, we would urge you to
6 consider the options that I've laid out on my handout of
7 either two or three; that would be either to simply
8 remove the prohibition that's in the current proposal
9 that was publicly noticed for 45 days; or consider
10 language similar to three that would say you can't use it
11 unless you demonstrate that you're completely in
12 compliance with all federal and state statutes.

13 If the staff is concerned about assignability,
14 they can make the argument that you don't meet the
15 assignability provisions so therefore it's not allowed
16 under current law. That's an existing law, there's no
17 need to add an additional law to that.

18 And if you go that route, I would urge you to
19 continue a dialogue on captive insurance with all
20 interested parties. I would urge that dialogue to be
21 open, to be thorough, and to be objective. I would urge
22 that dialogue to include the State of Vermont, anybody
23 who's interested, our friends at SWANA, other captive
24 insurance associations, other interested parties, to see
25 if we can get to a point where captive insurance can be

1 viewed in a positive light in California.

2 We may not ever reach that point, but I would
3 urge you to please keep that dialogue open so we can try
4 to achieve that goal.

5 In the meantime I know Waste Management, if you
6 continue this dialogue, would pledge that we wouldn't
7 bring forward a captive insurance proposal for your
8 approval for a solid waste facility until that dialogue
9 had been completed. So there's no fear on your part that
10 we're going to come forward with a proposal to use
11 captive insurance in California for a solid waste
12 facility in the near term until these additional
13 discussions with Vermont, with SWANA, with other
14 interested parties can have an opportunity to play out in
15 a full, fair, open and objective fashion.

16 And then finally, at the end of this dialogue
17 process, if you believe that there is still a need to
18 adopt additional law in California to restrict or limit
19 captives, then let's go forward with a 45 day notice
20 package that includes those provisions that you believe
21 at that time to be necessary. But let's not try to jam
22 additional limitations or restrictions in this package
23 that you have before you today.

24 That's the sum and substance of my comments.
25 I'd be happy to answer any questions. I would appreciate

1 the opportunity to keep working with you and your staff
2 on this issue. But again, I urge you to issue, to adopt
3 either options two or three on the handout that I have
4 provided for you today.

5 Thank you.

6 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
7 White. Any questions for Mr. White?

8 I'm sorry to do this, but a number of other
9 speakers have come in on this issue and we really do need
10 to take a ten minute break at this time. So we'll
11 reconvene in ten minutes.

12 (Thereupon there was a brief recess.)

13 BOARD CHAIR MOULTON-PATTERSON: I will, we'll
14 start again with ex-parte.

15 Mr. Eaton.

16 BOARD MEMBER EATON: None to report, thank you.

17 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.

18 BOARD MEMBER JONES: Sean Edgar on this item.

19 BOARD CHAIR MOULTON-PATTERSON: Thank you. I
20 have none.

21 Mr. Medina.

22 BOARD MEMBER MEDINA: None.

23 BOARD CHAIR MOULTON-PATTERSON: Mr. Paparian.

24 BOARD MEMBER PAPARIAN: None.

25 BOARD CHAIR MOULTON-PATTERSON: Thank you. We

1 will continue, and again I apologize for the break in the
2 middle of the item.

3 Chuck Helget representing Allied Waste.

4 MR. HELGET: Madam Chairman, members of the
5 Board, Chuck Helget representing Allied Waste.

6 Allied Waste has not used captive insurance in
7 California for a number of years, but we still oppose and
8 are on record opposing an outright ban of captive
9 insurance. This is based on our feeling that there are
10 appropriate, nationally appropriate situations that may
11 warrant the use of captive insurance.

12 We also oppose the staff recommendation because
13 of the inclusion of subsection E. In our view this is a
14 new issue and one that has been added only recently in
15 our discussions with Board staff. We're not sure of the
16 purpose of that language, nor are we sure of the impact
17 of this language, and have not had time to do that kind
18 of analysis.

19 Therefore, at a minimum, we would request, with
20 regard to the staff proposal, that the Board delete
21 subsection, subdivision E.

22 Since our current involvement with the issue, we
23 have asked the Board to avoid an outright ban on captive
24 insurance. The staff proposal without subdivision E is
25 better than the previous proposed outright ban. Given

1 the resolution we started with, we prefer this modified
2 resolution without subdivision E, and support it as a
3 compromise to a total ban on captives.

4 We also want to acknowledge, though, that the
5 proposed language would make it impossible to use
6 captives in California at the current time.

7 That concludes my comments. If there are any
8 questions by the Board members I'd be happy to answer
9 those.

10 BOARD CHAIR MOULTON-PATTERSON: I see none, Mr.
11 Helget. Thank you.

12 MR. HELGET: Thank you.

13 BOARD CHAIR MOULTON-PATTERSON: Mr. Paul Yoder
14 representing SWANA.

15 MR. YODER: Thank you, Madam Chair and members.

16 My apologies to Waste Management and to Allied
17 and to anyone in the private industry that cares about
18 this issue. SWANA has taken, I was notified on Friday
19 that they actually do have concerns about captive
20 insurance, and I apologize for the lateness of the
21 position.

22 However, luckily for me, today I can, I can urge
23 you to adopt any one of your four options in good
24 conscience. And I think that Board, it seems to me the
25 Board is seeking, at least trying to work out, obviously

1 work on something that would be something other than an
2 outright ban. And I guess, depending on how the I's are
3 dotted that would be fine.

4 And that would be my final comment is that
5 however the Board goes forward, if the Board goes forward
6 on anything other than an outright ban, it, the language
7 does need to be as tight as possible. This absolutely is
8 a public health and safety issue, and I'm sure you'll use
9 your usual careful consideration on this issue.

10 Thank you.

11 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
12 Yoder.

13 Sean Edgar representing Zanker Road landfill.

14 MR. EDGAR: Madam Chair and Board members, thank
15 you for the opportunity to address you. Sean Edgar on
16 behalf of the Zanker Road Landfill here to relay the
17 company's position with regard to the item before you
18 today.

19 The Zanker Road Landfill supports the outright
20 prohibition on the use of captive insurance that is
21 before you. Zanker Road landfill is a privately held
22 company in San Jose, California. They put a real dollar
23 in a real bank account at a real institution that is
24 somewhere right on Main Street, and are not involved in
25 the use of some very elaborate financial mechanisms of

1 offshore domicile, and there's a whole new language that
2 I'm becoming familiar with. On behalf of our operator,
3 they do put a real dollar in a real bank account
4 somewhere.

5 And this, the entire discussion about captive
6 insurance has gone on for many years now, and I'd like to
7 draw an analogy to the frog tunnel in Davis. I think as
8 many of us are aware, that Davis did build a frog tunnel
9 underneath one of the major roadways there to allow frogs
10 access to be able to cross under the roadway. Now, I
11 don't believe that any frogs have been seen actually
12 using the tunnel, but they do feel more comfortable
13 knowing that they have access to use the tunnel at some
14 stage in the future.

15 This discussion is very reminiscent. It would
16 enable the most financially strong in our industry to
17 effectively self-insure, not put the, a real dollar in a
18 real bank account in a real bank somewhere; it would
19 enable some very elaborate mechanism that would, I
20 believe, be very, very complex. We can see how complex
21 it is just in getting phone calls returned from Vermont
22 and Illinois and other places in the country.

23 So my brief comments, in short, Zanker Road's
24 position is please adopt the outright prohibition today.

25 And I'd be happy to answer any questions that

1 you may have.

2 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
3 Edgar.

4 Mark Sektnan of the American Insurance
5 Association.

6 MR. SEKTNAN: Good morning, Mark Sektnan with
7 the American Insurance Association. I'm going to be here
8 to talk about something other than captive insurance.

9 Our association is a trade association
10 representing about 370 major insurance companies, many of
11 whom write this type of insurance. Our concern is with
12 subsection H.

13 Subsection H would create a new section under
14 certain circumstances where an insurance policy could be
15 called upon by the Board to pay up front the face value
16 of the policy. We have several concerns with this.

17 First of all, it is inconsistent with the way
18 typical insurance is written. Generally what is written
19 on these types of projects is what is known as a general
20 liability policy.

21 MS. NAUMAN: Excuse me, excuse me. I'm sorry to
22 interrupt the speaker but just to assist the Board to
23 track these comments, if you look on the attachment one
24 which is the draft regulations, on page three, draft 3-24
25 you'll see a subdivision H which is part of Section

1 22248. It is that subdivision H that the speaker is
2 addressing.

3 BOARD CHAIR MOULTON-PATTERSON: Oh, thank you,
4 I was looking at the wrong part. Thank you.

5 MR. SEKTNAN: Generally the policies that are
6 written on these as is outlined in other sections of this
7 are a general liability policy where if the operator
8 fails to do something then the insurer will step up and
9 pay for the cleanup, closure costs, or whatever is
10 necessary.

11 Generally the insurer will pay or generally
12 reimburse the costs that have been incurred over both the
13 amount of the cost and the time period that the costs are
14 being incurred.

15 In essence, what this policy does is this, in
16 essence, turns a liability policy into what is more
17 commonly known as a life insurance policy where the Board
18 can say we've had an event, an event that is not, would
19 not usually trigger the insurance policy, but say we have
20 a face value of up to a million dollars, we want to call
21 that entire policy upfront right now.

22 This is like having an auto insurance policy
23 where you have a limit of \$50,000 on your comprehensive
24 damage. If you're in an auto insurance, you don't
25 necessarily expect to go to the auto insurance and say,

1 "I want \$50,000 up front."

2 Generally what will happen is the auto insurer
3 will pay up to \$50,000, but they'll pay the actual
4 costs. And that's the general way these types of
5 policies are written and these types of policies are
6 implemented.

7 However, section H would, in essence, allow you
8 to call that entire \$50,000 from your auto insurance up
9 front. It also raises several interesting questions.

10 Because these policies are generally reimbursed
11 over time and the money is reimbursed overtime, say that
12 the closure demands of the particular facility are only
13 75, or say \$750,000, but the Board has called a million
14 dollar face value up front, and then after eighteen
15 months, twenty-four months, however long these things
16 tend to take, the actual costs are \$750,000. What
17 happens to that additional \$250,000 that was not
18 necessary to pay for the insurable product, in essence,
19 the closure of the facility? And what happens to the
20 interest that would have accrued on that type of money
21 which is very important in terms of pricing the insurance
22 product?

23 All these questions remained unremained. While
24 we appreciate the fact that there may be problems, I
25 think the second section which, in essence, creates an

1 additional insured section where the state would ensure
2 that the insurance policy stays in effect regardless of
3 the status of the operator, I think probably takes care
4 of maintaining that insurance policy on the project.

5 BOARD CHAIR MOULTON-PATTERSON: Thank you. Any
6 questions?

7 Thank you for your comments.

8 Okay. That concludes our public speakers. Any
9 comments from staff before we go to the Board?

10 MS. NAUMAN: Yes, Madam Chair, I would just like
11 to respond to some of the issues that were raised.

12 Obviously we have a disagreement with Mr. White
13 with respect to what we've been told from the Department
14 of Insurance. And I think our staff explained to you the
15 conversations that they have had with them, and the
16 assurance that we've gotten from them that they
17 understand what's being proposed in the regulations and
18 are fully prepared to implement those should you move to
19 continue your consideration of them.

20 With respect to the Senate, Assembly Bill 715 is
21 actually the number, in the conversations that we had
22 with the Senator's staff, we understood that her
23 objective was to try to create opportunities for captive
24 insurance to be used as a mechanism within California.
25 We never really talked about the issue of the Department

1 of Insurance and whether there was, you know, an
2 overriding objective to be sure that this insurance could
3 be written and utilized in California without going
4 through the Department of Insurance. So we do take
5 exception with that argument.

6 Staff is still proposing that you give serious
7 consideration to the compromise proposal that we're
8 making.

9 With respect to the comments from Allied about
10 the additional language, it appears in subdivision --

11 BOARD CHAIR MOULTON-PATTERSON: E.

12 MS. NAUMAN: -- E. Let me look it up so I can
13 make sure I'm saying it correctly. "That exist in
14 subdivision E, the policy shall transfer the financial
15 risk of closure."

16 While staff thinks that's an important
17 consideration, it's not really fundamental to the
18 discussion that we're having. The substance of the
19 regulatory change really is contained in subdivisions A
20 and B, and that's really where the policy decision
21 resides.

22 So if the Board chooses to delete subdivision E,
23 the proposed language change, the staff would not have a
24 problem with doing that.

25 And we recognize that either way, whether it

1 stays in or comes out at this time, what we're asking is
2 that this language be sent out for an official fifteen
3 day comment period so that we have the benefit of all
4 thoughts on this.

5 I'd also like to just again point out the
6 difference between the option that Mr. White was
7 suggesting that you consider as an alternative to the
8 staff's suggestion.

9 When you look at item three on the list that he
10 gave you, you'll note that that is really an amendment to
11 Section 22228 which are the general provisions for
12 financial assurance mechanisms.

13 The staff recommendation addresses Section 22248
14 which is specific to insurance, and it is within that
15 section of the regulations that you have all the
16 provisions relative to insurance. And under that we
17 would require the Department of Insurance licensing.
18 Under option three, the Department of Insurance would not
19 be involved.

20 And with that we'll be available to answer any
21 questions.

22 BOARD CHAIR MOULTON-PATTERSON: Thank you for
23 those clarifications.

24 LEGAL COUNSEL TOBIAS: Madam Chair.

25 BOARD CHAIR MOULTON-PATTERSON: Yes, Ms. Tobias.

1 LEGAL COUNSEL TOBIAS: I might add that if the
2 Board is looking at the issue raised by the gentleman
3 from the insurance group, that language on H, that the
4 last line, the sentence that I think that he's talking
5 about primarily, it says, "The policy shall further
6 guarantee that the insurer shall, without delay, pay to
7 the CIWMB the amount that CIWMB requests up to the face
8 amount."

9 We could tighten that and add that, "Should pay
10 to the CIWMB the amount necessary to close the site as
11 determined in a publicly noticed meeting," which would be
12 clear that we're not just demanding, you know, a million
13 dollars if that's what the face value of the policy is,
14 but the amount that's necessary to close it. And that
15 would be, if that was in a publicly noticed meeting they
16 could certainly come in and contest that.

17 But as you may recall, this was added with our
18 experiences with one of the sites that we had and the
19 difficulties in dealing with that insurer. So this is an
20 important provision.

21 BOARD CHAIR MOULTON-PATTERSON: Thank you, Ms.
22 Tobias.

23 Board members on this? Dan, Mr. Eaton.

24 BOARD MEMBER EATON: Well, the opposite is true
25 then too, because I've been to a series of public

1 meetings where the estimated costs were X, and then later
2 you find out that they're Y, so I don't think that's
3 where you really want to go either.

4 BOARD CHAIR MOULTON-PATTERSON: Thank you.

5 LEGAL COUNSEL TOBIAS: Well, could I respond to
6 that? What I think that I'm trying to say is that, that
7 maybe what we need to do in the fifteen days is just
8 tighten that language so that it's clear that we're not
9 simply saying we have an insurance policy worth a million
10 dollars and we want the million dollars. That basically
11 we would provide a justification. That justification may
12 say, you know, we think it will take \$500,000 at this
13 point, but that doesn't mean that we wouldn't be back for
14 the other \$500,000 at some other point given that.

15 So I'm just suggesting that if that's a concern
16 to the Board we could tighten that up. I also think the
17 language could stand as it is, but I thought that might
18 help narrow it.

19 BOARD CHAIR MOULTON-PATTERSON: Thank you, Ms.
20 Tobias.

21 BOARD MEMBER 1: Madam Chair.

22 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.

23 BOARD MEMBER JONES: Madam Chair, I think that
24 Ms. Tobias brings up a good point. This was added
25 because of problems we had when we were basically told by

1 insurance companies to pound salt. We don't like doing
2 that.

3 So I think, do we in the fifteen days, are we
4 able to work with this gentleman and others to make
5 sure -- I think you're right. If we have an estimate,
6 which has to be updated every year, and somebody
7 defaults, you go off of that estimate as the additional
8 expenditure of funds, and then you have to leave in there
9 that, that that may change due to conditions. And
10 they've insured to a certain dollar amount that it will
11 happen. It sort of makes sense that that needs to be
12 worked out in the next fifteen days.

13 We don't have an exclusion right now on
14 captives, do we? I know that legal had an opinion that
15 captives could be out of our existing regs, but there is
16 no exclusion now?

17 LEGAL COUNSEL TOBIAS: No, that's correct, there
18 is no exclusion now.

19 BOARD MEMBER JONES: Because I don't want to see
20 captives used in California. But I've made the arguments
21 before that I think the outright ban makes no sense, not
22 in the middle of a discussion between Cal EPA and all the
23 other states when they're trying to determine what's the
24 appropriate level of assurances. And I think we
25 prejudice those by doing an outright ban.

1 And plus, I think that there's an awful lot of
2 people wed to this issue, and maybe we need to be able to
3 put it to sleep and let people kind of cool down for a
4 while and deal with it at a later date. And I think we
5 may end up having an outcome that makes some sense.

6 The, if we were to move this forward with the
7 staff's proposal, which I got so much paper up here by
8 different people. I guess it's this one?

9 MR. CASTLE: Yes.

10 BOARD CHAIR MOULTON-PATTERSON: Yes.

11 BOARD MEMBER JONES: Okay. And we exclude E.
12 With the exclusion of all of E or just --

13 MS. NAUMAN: Just the underlined or highlighted
14 language which is new language to that subdivision.

15 BOARD MEMBER JONES: Okay. Right. And that
16 would basically say you got to go through the hoops to
17 ever do it in California.

18 MS. NAUMAN: And comply with all the state laws.

19 BOARD MEMBER JONES: And comply with all state
20 laws, which means if they can't comply we're protecting
21 the public health and safety. And let other states have
22 the debate, and the federal government, without
23 prejudicing them, which makes sense to me.

24 BOARD CHAIR MOULTON-PATTERSON: Okay. So your
25 motion, did you have a motion?

1 BOARD MEMBER JONES: Well I didn't have a
2 motion, I didn't know if others wanted to chime in.

3 BOARD CHAIR MOULTON-PATTERSON: Any other
4 comments?

5 BOARD MEMBER EATON: I just wanted to go back --

6 BOARD CHAIR MOULTON-PATTERSON: Mr. Eaton.

7 BOARD MEMBER EATON: -- to H if I could.
8 Because there's a distinction here that seems to be lost
9 and confusing a little bit about some other insurance
10 policies that the Board may have accessed.

11 The reason why the face value and the issue of
12 guarantee is so appropriate in this particular setting is
13 because there are many, many provisions in these
14 insurance policies that says if there is a dispute, that
15 the amount of face value and the attorney's fees that are
16 associated therewith are deducted from the face value.
17 So that while you have a million dollar policy, if
18 there's a dispute --

19 BOARD MEMBER JONES: They can eat it all up.

20 BOARD MEMBER EATON: -- they could eat it up in
21 legal fees. And so, therefore, you're only getting
22 \$750,000, which was our experience in one other matter.

23 So therefore, when we say that the insurer shall
24 guarantee the face value, you hedge against whatever
25 terms may have been between the insurer and the insured,

1 because we don't get to generally see those policies.

2 And that was my point right there. And so that was the
3 reason for the face value.

4 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
5 Eaton.

6 LEGAL COUNSEL TOBIAS: Madam Chair. And I would
7 agree with that, Mr. Eaton, and so would not want to back
8 off of that part.

9 I simply, and I don't know if you want to
10 clarify with the insurance person whether, which part
11 he's talking about. So I certainly would agree with Mr.
12 Eaton, and I feel strongly that we would want to maintain
13 that approach.

14 I thought perhaps he was just having problems
15 with the wording at the end of that section which seemed
16 maybe a little bit broad in terms of what we were doing.

17 So if you want to clarify with him or if the
18 Board includes it in the motion.

19 BOARD MEMBER EATON: I think we're going to go
20 fifteen days and we'll be able to work through what the
21 concerns were with the company that are valid in some
22 respects. But also in particular here, and this goes
23 really to the core, that the whole idea we're talking
24 about with captive is that if there is a problem, we
25 don't have to go through hoops to get the money. And

1 that if there is sufficient capital there, I mean that's
2 what the statute says.

3 And so I think once we get it through that we
4 can find that, but that goes back to the basic core
5 question I think.

6 BOARD CHAIR MOULTON-PATTERSON: Okay. Thank
7 you.

8 Mr. Medina.

9 BOARD MEMBER MEDINA: Madam Chair, after
10 reviewing all the analysis and hearing all the testimony
11 on this item I'm ready to support staff's recommendation
12 with striking out the new language that was included
13 under subsection E.

14 And while the Board has the authority to adopt
15 regulations precluding the use of captive insurance,
16 staff has worked hard with the stakeholders, particularly
17 Waste Management, to ensure an equitable recommendation,
18 and I believe that the middle ground has been reached by
19 the agreement that has been put forward by staff. And
20 while some might not be totally happy with the results, I
21 believe that considerable ground has been achieved with
22 the adoption of this new language.

23 BOARD CHAIR MOULTON-PATTERSON: So you so move.
24 Thank you.

25 BOARD MEMBER MEDINA: And if Mr. Jones is going

1 to make the appropriate resolution, I'd like to second
2 that.

3 BOARD MEMBER JONES: I thought you did, I was
4 going to second yours, but --

5 BOARD MEMBER MEDINA: Otherwise I will go ahead
6 and move the resolution.

7 BOARD CHAIR MOULTON-PATTERSON: Okay.

8 BOARD MEMBER JONES: Just one question, Mr.
9 Medina and Madam Chair. The issue on H where Mr. Medina
10 brings up the point, and he's right as is Ms. Tobias, we
11 really need to maybe in this process look at, pay the
12 Waste Board the amount that the Waste Board requests
13 based on the most current approved closure, post closure
14 estimates. And, and then leave the, figure out how to
15 deal with the language that says, you know, up to an
16 amount equal to the face value of the policy if that, in
17 fact, is something that triggers later. If the estimate
18 is lower than the face value you still have the ability
19 to go in there.

20 Try to work on that because Mr. Eaton is right,
21 I mean he was in the room when we, when they ended up
22 telling us to pound salt.

23 So if that's okay, Mr. Medina, that we deal with
24 that portion with those kinds of, with that kind of
25 thought process, does that work, Mr. Eaton?

1 BOARD MEMBER EATON: Fine.

2 BOARD MEMBER JONES: Okay. So is that, are you
3 going to make the motion or --

4 BOARD CHAIR MOULTON-PATTERSON: So we have a
5 motion by Mr. Medina to approve Resolution 2001-289 to,
6 with the staff recommendation with the deletion of the
7 new language in E to go out for a fifteen day notice with
8 this language.

9 And do you want to second that Mr. Jones?

10 BOARD MEMBER JONES: I do.

11 BOARD CHAIR MOULTON-PATTERSON: Okay. We have a
12 motion and a second.

13 Please call the roll.

14 BOARD SECRETARY VILLA: Eaton?

15 BOARD MEMBER EATON: Aye.

16 BOARD SECRETARY VILLA: Jones?

17 BOARD MEMBER JONES: Aye.

18 BOARD SECRETARY VILLA: Medina?

19 BOARD MEMBER MEDINA: Aye.

20 BOARD SECRETARY VILLA: Paparian?

21 BOARD MEMBER PAPARIAN: Aye.

22 BOARD SECRETARY VILLA: Moulton-Patterson?

23 BOARD CHAIR MOULTON-PATTERSON: Aye. Motion
24 approved.

25 And we go to item number four which is an update

1 on the status of the regulation development process for
2 construction, demolition debris, and inert waste transfer
3 and processing, and disposal facilities and operations.

4 MS. NAUMAN: Thank you, Madam Chair. I think
5 Mark de Bie is coming up to present this. We really
6 wanted to just move forward to the Board, we had actually
7 planned to do this in July, and kind of give you an
8 update on where we are with the development of this two
9 part regulation package.

10 You kind of hit on this issue in a couple of
11 other agenda items, and it's related to a number of items
12 that you've been discussing lately, so we wanted to give
13 you a sense where we are and our plan which is now, given
14 the delay, underway, so we'll be giving you kind of an
15 update on events that have happened even since the July
16 Board meeting.

17 So I'll let Mark explain the details.

18 MR. de BIE: Thank you, Julie. Mark de Bie with
19 the Permitting and Inspection Branch.

20 Madam Chair and Board members, as Julie
21 indicated, this is an update for you on staff's plan to
22 begin the effort to, again to develop the regulations to
23 tier the facilities that process and/or transfer C and D
24 and inert material as well as dispose of C and D and
25 inert material.

1 There was an effort several years ago to do
2 this, and we ran out of the timeframe allowed to develop
3 the regulations without resolving all of the issues. And
4 there's been a lot of water under the bridge, and staff
5 has now geared up and ready to move forward with the
6 package again.

7 And because of a lot of the past discussion,
8 staff feels that by bringing this package forward in two
9 phases, that we could do it in an accelerated manner,
10 minimizing time spent on the informal process because
11 much of the discussion, again, has taken place; and then
12 going directly, or not directly but a little bit faster
13 than we usually do into a formal process.

14 And so on page 4-2 of your agenda item is a
15 proposed schedule. And I'll remind the Board that they
16 have approved developing these regs into phases.

17 Phase one will deal with the transfer processing
18 aspect.

19 And then phase two will follow with the disposal
20 aspect.

21 We had planned to bring this item to you last
22 month and it got continued to this month, so we're in
23 need to adjust those timeframes in the, in that proposed
24 schedule by a month. And, but otherwise we're well on
25 our way into the informal process with the phase one. We

1 have resources in place.

2 And I'll formally announce that Allison Reynolds
3 who is a staff person that we've just brought back into P
4 and E will be the lead person for this effort. Allison
5 was the lead person for developing the transfer station
6 regulations when they were revised recently.

7 And one of the first tasks Allison has
8 accomplished so far is to schedule some tentative dates
9 for workshops for phase one. And we're looking at two
10 dates right now; September 4th for a workshop in the
11 Diamond Bar area; and then September 19th for a
12 Sacramento venue. Those are tentative dates, and they
13 will be firmed up in the next day or two and posted on
14 the Board's Web page. But we're pretty certain that
15 those will occur. And those again will deal with phase
16 one regs which are the transfer station regs.

17 And the current version, working version of
18 those regs are included in your agenda item. And
19 basically they are very, very similar to the ones that we
20 finished up with a few years ago. We have adjusted some
21 of the language relative to the tiering, but all of the
22 design and operational requirements are very similar.

23 As you can see by the schedule, staff is
24 proposing that we begin the phase two process in
25 November, December timeframe, and that will coincide with

1 approximately the same time that we get information from
2 the mine survey contract, or actually interagency
3 agreement with UCD on their findings and recommendations
4 relative to mines, reclamation, and the use of C and D
5 and inert material.

6 So staff as well as the Board will be able to
7 use that information in making determinations relative to
8 phase two which is the disposal aspect of these regs.

9 So if we follow this aggressive schedule we
10 should have both phase one and phase two in place in the
11 middle of next year.

12 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
13 De Bie.

14 Questions? Comments? Mr. Paparian.

15 BOARD MEMBER PAPARIAN: Just a quick question.
16 You said because of our delay from the last meeting you
17 would need to adjust these timeframes by a month. Are
18 you still thinking that -- well, can you make up the time
19 so that we can get everything done by next June as was
20 anticipated in the timeline we have?

21 MR. de BIE: We'll attempt to have both of them
22 done by June, yes. And I, I misspoke. We didn't delay
23 anything because it got continued, it was just that we
24 wanted to formally kick things off last month, we're now
25 doing it this month. But as I indicated, we already

1 scheduled some workshops and so I think June, June is
2 still doable.

3 BOARD MEMBER PAPARIAN: Okay, good. Looks good.

4 BOARD CHAIR MOULTON-PATTERSON: Thank you. I
5 think we're all real anxious to begin this. I know we
6 were talking about this at my first meeting almost two
7 years ago. So we really are glad that you've worked so
8 hard on it and want to get started and take the guesswork
9 for the LEAs out of it.

10 So thank you very much. And without any other,
11 I don't see any other comments, so just go ahead with
12 your schedule. Thank you.

13 MS. NAUMAN: Thank you.

14 BOARD CHAIR MOULTON-PATTERSON: Items five, six,
15 and seven were discussion items that were put on just in
16 case we didn't have time at the briefing to discuss
17 them. They were discussed and we had those
18 presentations.

19 So we are going to skip to our first item of new
20 business, this is Waste Prevention and Market
21 Development, item number eight.

22 MS. WOHL: Good morning, Madam Chair and Board
23 members. Patty Wohl, Waste Development and Market
24 Development Division.

25 Agenda item number eight is consideration of

1 support for a memorandum of understanding on the
2 negotiated outcomes for carpet stewardship between the
3 carpet industry and the states of Iowa, Minnesota, North
4 Carolina, Maryland, Massachusetts, Oregon, and
5 California, and the U.S. Environmental Protection Agency.

6 Rick Muller will present.

7 BOARD CHAIR MOULTON-PATTERSON: Thank you.

8 MR. MULLER: Good morning, Madam Chair and
9 members. My name is Rick Muller, I work for the Waste
10 Prevention and Market Development Division.

11 This item is about carpet waste, carpet
12 recycling, and opportunities that the Board has to
13 increase recycling rates for old carpet here in
14 California.

15 An estimated 2.4 million tons of postconsumer
16 carpet is generated each year in the U.S., is generated
17 each year in the U.S. In California the generated carpet
18 waste is about 288,000 tons per year, or about one-half
19 of one percent of California's waste stream. This
20 component of the waste stream is expected to grow by
21 about 45 percent over the next ten years. As reuse and
22 recycling rates and other diversion alternatives are
23 poorly developed in California, most of this postconsumer
24 material currently ends up in landfills.

25 During early January of this year our chair,

1 Linda Moulton-Patterson, received an invitation from
2 Sherrie Ensler, Director of the Minnesota Department of
3 Environmental -- I'm sorry, Director of the Minnesota
4 Office of Environmental Protection to participate in the
5 Midwestern work group on carpet recycling. This name is
6 kind of misleading. It's actually not a regional effort
7 at all, it's become a national effort.

8 Board staff on behalf of Cal EPA has
9 participated in this initiative, and has provided input
10 to the work group using a consensus based process. Staff
11 has attended five meetings between March and August of
12 2001.

13 The Midwestern work group is a partnership
14 effort between 92 percent of the carpet industry,
15 participants from fifteen states, the U.S. EPA, and other
16 stakeholders, to develop a national strategy of product
17 stewardship for the carpet industry. An agreement
18 entitled, "The Negotiated Outcomes for Carpet
19 Stewardship" will be the principal work product in the
20 form of an MOU produced by the work group. And by the
21 way, the Northeast Recycling Council is also
22 participating, and they represent nine states.

23 An MOU between the parties is currently being
24 finalized and will commit the industry to achievable
25 carpet recycling rates over the next ten years; in

1 addition to other diversion alternatives such as reuse,
2 recycling, waste to energy, and cement kilns, resulting
3 in an overall disposal reduction rate of 34 percent by
4 the year 2012 which is the end of the planning horizon.

5 The maximum reuse and recycling rate identified
6 in the MOU is 30 percent. And the final draft of the MOU
7 will be available sometime after August 24th.

8 The MOU is expected to receive national media
9 attention at the National Recycling Coalition annual
10 conference in Seattle on October 2nd, 2001, where the
11 signing of the final agreement will be announced by the
12 NRC Board. Therefore, a decision of the State of
13 California on whether to support the carpet recycling
14 agreement is of pivotal concern at this time.

15 Staff makes the following recommendations in
16 support of Board's conception -- in support of the
17 Board's conceptual endorsement of the MOU.

18 While staff concedes that the agreement falls
19 short of the initiative's original intent, which was to
20 eliminate carpet from landfill disposal, staff recommends
21 that the Board support the concept of endorsement of the
22 MOU on negotiated outcomes for carpet stewardship. On
23 balance, the agreement will further the goals of resource
24 conservation and AB 939 diversion.

25 Staff further recommends that the interim

1 director convene an internal Cal EPA review of the MOU
2 with respect to other environmental media.

3 And staff further recommends that the interim
4 director review the final MOU for consistency with this
5 agenda item and secure appropriate signatures.

6 And finally, staff recommends that the interim
7 director meet with Cal EPA secretary Winston Hickox, and
8 state and consumer agency secretary Eileen Adams, to seek
9 support from other appropriate state agencies and their
10 signatures on this MOU.

11 I'd like to cover very briefly some key issues,
12 and I guess I'll start with the burning issue or the
13 transformation issue. I think there's four reasons why
14 this agreement is not going to really affect or increase
15 transformation or burning of carpet here in California.

16 The first reason is that the agreement allows it
17 at a very low level. The goal of four percent for cement
18 kilns and waste to energy facilities is currently the
19 maximum goal in the MOU.

20 If you look at California, even if we reach that
21 goal of four percent, transformation would only amount to
22 about 30 tons per day or two one-hundredths of one
23 percent of the entire California waste stream.

24 The third point regarding transformation is that
25 based on staff's survey of California waste to energy

1 plants, they're all currently permitted to burn carpet,
2 but currently are not burning very much and really aren't
3 very interested in doing so. There's a number of reasons
4 for this, but basically it's very capital intensive to
5 change their operations to burn whole carpet, and it's
6 difficult to shred the carpet as well. And they're also
7 concerned about emission problems.

8 The fourth reason, California's endorsement of
9 the MOU will not likely increase carpet burning because
10 diversion efforts will be focused on nylon six and nylon
11 66 carpet, and they're going to be focused on value added
12 recovery. These materials are generally considered too
13 valuable to send to waste to energy unless you remove
14 backing from the face material which is not the business
15 model that's being used. They're basically shipping
16 whole carpet back east.

17 Other issues in support of the staff
18 recommendation: The initiative is really the first
19 transferrable stewardship model for the U.S. industry.
20 In my agenda item I referred to several elements or
21 attributes of the model that I think are highly
22 transferrable to other product stewardship efforts. I
23 won't take any time up on that right now though in the
24 interest of time.

25 If the Board endorses this MOU it will be

1 sending a signal that may encourage other product
2 stewardship initiatives.

3 Another point is that support for the MOU will
4 enforce parallel projects here in California. For
5 example, a model procurement guideline is already part of
6 this initiative and is referenced in the MOU.

7 The Board is involved in California's
8 Environmentally Preferable Product Procurement Task Force
9 at this time, a multi-agency task force, and we're
10 working on green procurement specifications and product
11 stewardship responsibilities, including carpet.

12 It's possible -- the California procurement
13 guidelines could possibly be a model for the state
14 uniform guidelines that I referred to for carpet.

15 Board staff wishes to emphasize that the MOU
16 does not preclude more aggressive policies for carpet
17 reuse, recycling, and waste diversion. The same is true
18 of the model procurement guidelines which are being
19 developed by the work group. The MOU is really a
20 foundation or a springboard for California's efforts,
21 it's not really, it shouldn't really be viewed as a
22 ceiling. In fact, because of the stewardship effort,
23 collectively the states may actually develop some
24 procurement purchasing agreements that will likely, that
25 will likely result in market development that would not

1 have otherwise occurred.

2 In conclusion, staff is recommending that the
3 Board conceptually support the MOU as detailed in
4 Resolution 2001-320 in recognition of the Midwestern work
5 group on carpet recycling's efforts as an example of
6 industry and government working in partnership to
7 accomplish resource conservation goals.

8 Thank you, and I'd be happy to answer any
9 questions.

10 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
11 Muller. And I know we have some questions and comments,
12 but I want to thank you. This is really a great
13 partnership and I appreciate all your work on it.

14 Mr. Paparian.

15 BOARD MEMBER PAPARIAN: Yeah, Madam Chair. I am
16 very Impressed by the work that's been done on this. At
17 the appropriate time when it's time to move the
18 resolution I want to add something to the resolution, and
19 it relates to getting a chance to review the progress of
20 this effort after a couple of years. And so again, at
21 the appropriate time I'll ask that we add to the
22 resolution something to the effect of coming back in a
23 couple of years, reviewing the progress, and making
24 recommendations regarding our continued support of the
25 effort.

1 BOARD CHAIR MOULTON-PATTERSON: Okay. Thank
2 you, Mr. Eaton.

3 BOARD MEMBER EATON: Really just a couple of
4 comments because I know it was a lot of hard work and
5 also how difficult it is when you're trying to deal with
6 multiple states in trying to reach something.

7 But I do, at least from my own personal
8 standpoint, want to emphasize that I hope this is just a
9 floor and not a ceiling with regard to these percentages,
10 and that I think it's California advocates who ought to
11 be advocating that time and time again, whether we do
12 that through a review process, or what have you.

13 Second and foremost, the reuse section needs to
14 be beefed up, and I think that we as California have to
15 follow our own hierarchy of reduce, reuse, and recycle.
16 And I think we all far too many times do just the
17 opposite, we recycle, and then hopefully we reduce, and
18 then we get to reuse. And if you take only four percent
19 or five percent of the reuse, that's only 11,000 tons.
20 That's basically what Wood's Carpet Store has right down
21 the street here from remnants that you can get by on. So
22 that's not really reuse as a whole. So how we deal with
23 pushing that forward would be very important I think.

24 And finally, source reduction. Is there
25 anything in here that relates to energy? Because carpet

1 manufacturing is very energy intensive. And it is
2 extremely, it uses a lot of energy to produce carpet.
3 Now we are fortunate enough to have in California the
4 only solar powered carpet manufacturer facility I believe
5 west of the Mississippi, so hopefully, you know, given
6 California's predicament with energy, that we can somehow
7 work into the MOU a way to reach the goal to reduce our
8 reliance on the energy that's used to manufacture carpet
9 as well.

10 MR. MULLER: To answer your question, I don't
11 think there's anything specific in the MOU--

12 BOARD MEMBER EATON: I know, I'm asking if you
13 could go and be an advocate for that.

14 MR. MULLER: Yeah, I can certainly try to do
15 that, but it is a little far along in the process as
16 we're just trying to finalize it this next Thursday. But
17 that's something that I could look at and have a
18 discussion with the other members, yes.

19 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
20 Eaton.

21 Mr. Paparian.

22 BOARD MEMBER PAPARIAN: All right, Madam Chair.
23 I'd like to move Resolution 2001-320 with the addition of
24 a resolved clause and it would read,

25 "Be it further resolved that

1 within 24 months of the formal
2 signing of the MOU, staff will
3 conduct an assessment of carpet
4 industry progress toward ensuring
5 successful disposal reduction, and
6 make a recommendation to the Board
7 regarding continued support."

8 BOARD CHAIR MOULTON-PATTERSON: Thank you.

9 BOARD MEMBER MEDINA: Second.

10 BOARD CHAIR MOULTON-PATTERSON: Okay. We have a
11 motion by Mr. Paparian to approve Resolution 2001-320
12 with the added resolved, seconded by Mr. Medina.

13 Please call the roll.

14 BOARD SECRETARY VILLA: Eaton?

15 BOARD MEMBER EATON: Aye.

16 BOARD SECRETARY VILLA: Jones?

17 BOARD MEMBER JONES: Aye.

18 BOARD SECRETARY VILLA: Medina?

19 BOARD MEMBER MEDINA: Aye.

20 BOARD SECRETARY VILLA: Paparian?

21 BOARD MEMBER PAPARIAN: Aye.

22 BOARD SECRETARY VILLA: Moulton-Patterson?

23 BOARD CHAIR MOULTON-PATTERSON: Aye. Motion
24 approved.

25 Let's see. Number nine.

1 MS. WOHL: Agenda item nine, consideration of
2 approval of rigid plastic packaging container compliance
3 agreements for compliance years 1997, '98, and '99 will
4 be presented by Michelle Marlowe.

5 BOARD CHAIR MOULTON-PATTERSON: I apologize,
6 we're having some technical difficulties. Thank you.

7 (LAUGHTER.)

8 MS. MARLOWE: I understand completely. Good
9 morning, Board members. I'm Michelle Marlowe with the
10 Waste Prevention and Market Development Division.
11 Somewhat surprised to be before you this morning, I had
12 forgotten about the Board meeting so I apologize for my
13 appearance. It's a recurring nightmare I've had for
14 fifteen years, it finally came true. Welcome to my
15 nightmare I suppose.

16 (LAUGHTER.)

17 MS. MARLOWE: This month we're before you with
18 what's becoming a fairly standard recommendation for this
19 Board to enter into compliance agreements with companies
20 that were found to be out of compliance with RPPC law
21 during the last combined certification for 1997, '98 and
22 '99.

23 This month we're bringing seventeen companies to
24 you for consideration. That's 54 to date with an
25 expected 182 companies that were originally deemed to be

1 out of compliance, although that number is fluid and
2 continues to change as we work our way through that
3 rather large number of yet to be determined companies and
4 unresponsive companies. So ultimately, you know, that
5 number will be much higher.

6 So without much ado, this month's seventeen
7 companies that we'd like to have you agree to enter into
8 compliance agreements with, and I'll read into the
9 record, are: Actron Manufacturing Company; Bonakemi
10 Manufacturing Company; Clean Sweep Supply Company;
11 Franklin International; Gorm, Incorporated; Iron-Out,
12 Incorporated; Klein Tools, Incorporated; McGean-Rohco,
13 Incorporated, McGean Division; Prochem; Quest Chemical
14 Corporation; Ridge Tool Company; Thomas and Betts; Trico
15 Manufacturing Corporation; Truck-Lite Company,
16 Incorporated; Valspar Corporation; W.M. Barr and Company,
17 Incorporated; and Modern Options.

18 The resolutions are not sequential because of
19 late negotiations. And I would like to have Board member
20 approve my recommendation and adopt resolutions that
21 appear on the last page of this item.

22 BOARD CHAIR MOULTON-PATTERSON: Thank you very
23 much.

24 Any Board discussions before we move this? Mr.
25 Jones.

1 BOARD MEMBER JONES: No, but I, the -- what are
2 the, what are the numbers of the resolutions? Does this
3 go --

4 MS. MARLOWE: I'm sorry.

5 BOARD MEMBER JONES: 2001 -- I want to move
6 adoption of 2001-299 --

7 MS. MARLOWE: Beginning 300 -- excuse me.

8 BOARD MEMBER JONES: Go ahead.

9 MS. MARLOWE: Do you want me to read them
10 because they're not sequential this month. 2001 --

11 BOARD MEMBER JONES: Here, I've got 'em, okay.
12 Madam Chair.

13 LEGAL COUNSEL TOBIAS: Excuse me, Mr. Jones.
14 You know, I think if you wanted to you could simply say
15 that you're moving the resolutions that are contained on
16 the staff report on page 9-3 including 1 through 34 if
17 you wanted to.

18 BOARD MEMBER JONES: I would but I don't have
19 9-3 so it makes it kind of tough.

20 LEGAL COUNSEL TOBIAS: Well you could just say
21 that or you could call 'em out, whichever you like.

22 BOARD MEMBER JONES: Okay. Madam Chair, I'll
23 move adoption of resolutions contained on 9-3 for the
24 consideration and approval of rigid plastic packaging
25 container compliance agreements for compliance years

1 1997, '98, and '99 for those companies.

2 BOARD CHAIR MOULTON-PATTERSON: Okay. I'll
3 second. Motion by Mr. Jones as stated, seconded by
4 Moulton-Patterson.

5 Please call the roll.

6 BOARD SECRETARY VILLA: Eaton?

7 BOARD MEMBER EATON: Aye.

8 BOARD SECRETARY VILLA: Jones?

9 BOARD MEMBER JONES: Aye.

10 BOARD SECRETARY VILLA: Medina?

11 BOARD MEMBER MEDINA: Aye.

12 BOARD SECRETARY VILLA: Paparian?

13 BOARD MEMBER PAPARIAN: Aye.

14 BOARD SECRETARY VILLA: Moulton-Patterson?

15 BOARD CHAIR MOULTON-PATTERSON: Aye. Motion
16 approved.

17 MS. MARLOWE: Thank you.

18 BOARD CHAIR MOULTON-PATTERSON: Item number ten.

19 MS. WOHL: Agenda item ten, consideration of
20 approval of the proposed scoring criteria and evaluation
21 process for the third cycle of the reuse assistance
22 grants.

23 And Sarah Weimer will present.

24 MS. WEIMER: Good morning, Madam Chair and
25 members of the Board. Sarah Weimer with the Reuse

1 Assistance Grant, Waste Prevention and Market Development
2 Division.

3 This agenda item is for consideration of
4 approval of the proposed scoring criteria and evaluation
5 process for this third cycle of the reuse assistance
6 grants, fiscal year 2001, 2002, authorized via fiscal
7 year 2000-2001 BCP number five.

8 The general review criteria consists of the
9 standard review criteria already approved by the Board
10 weighted heavily on need for the proposed project.

11 Also included in the general review criteria is
12 a criterion for a green procurement policy and
13 sustainable practices policy, such as grass cycling,
14 composting, and water efficient landscaping.

15 There are a maximum of 125 points possible,
16 including 25 preference criteria points. Preference
17 criteria areas include key priority wastes, expansion,
18 visible and educational, recipients of project and
19 vocational training.

20 These criteria are nearly identical to the
21 criteria of the second cycle in which grant recipients
22 are currently just getting underway with their grant
23 projects.

24 The Board approved award of these projects at
25 the April 24th-25th, 2001 meeting, with projects ranging

1 from establishing a Habitat for Humanity restore in
2 Sacramento, to establishing a materials exchange program
3 at the University of California at Berkeley campus, to a
4 food diversion project with the City of Lomita partnering
5 with Food Finders, a non-profit organization.

6 Following approval of this item, program staff
7 will send the notice of funds available to several
8 thousand contacts statewide. The notice of funds
9 available will also be available on our website.

10 The proposed due date for the applications is
11 November 30th, 2001. Once the applications are received,
12 program staff will convene panels consisting of the
13 appropriate Board staff.

14 This proposal will utilize up to \$250,000 of
15 fiscal year 2001-2002 IWMA funds.

16 Staff recommends that the Board direct staff to
17 use the proposed evaluation and scoring criteria to
18 evaluate and rank applications for the third cycle of
19 reuse assistance grants, and to bring the resulting list
20 of ranked applications back to the Board for award.

21 At this time I would like to invite any
22 questions you may have.

23 BOARD CHAIR MOULTON-PATTERSON: Any questions?
24 Mr. Eaton.

25 BOARD MEMBER EATON: Yes, I have a couple of

1 questions. One is, we have had a history from time to
2 time on this Board on the date, and I want to turn to
3 page 10.10-3 under the section Ineligibility. And I was
4 wondering if that can't be handled a different way.

5 Many times we as a Board go in reused grants
6 where we have done grants, and the situation could take
7 place, really if you look at what we've done for the City
8 of Berkeley in some of their reuse and some of those
9 funds, and sometimes it takes more than one cycle to
10 prime the pump.

11 And by what you're doing with the ineligibility
12 is denying and just saying we're going to give you a
13 little small bit of money one year, and then the next
14 year you're ineligible. And I don't think that's a
15 proper policy for this Board. I think we ought to look
16 at it. I don't think that they ought to be given extra
17 points or deducted. I don't think they should not be
18 deemed ineligible, because it could be that the project
19 is going and it's worthwhile and there's been other
20 difficulties that have taken place; local government
21 funding that may not have come through in the full
22 amount. That can happen because of the state budget and
23 so on and so forth.

24 So I'm, I don't think I can support an
25 ineligibility provision as written like this. Especially

1 with groups that may deal with small money, low income
2 groups may not have the money year in and year out to
3 keep the reuse going where that would be a necessity. So
4 for that reason ineligibility, I think, based upon prior
5 grants, is not acceptable to me.

6 The other point that I would like to raise is a
7 point of procedure for the Board. Again, we've had the
8 same problem, and I really apologize, you seem like you
9 always get my wrath here instead of the other individual
10 who puts you up there instead.

11 The ten point, 10-5 at the top of the page,
12 second full paragraph.

13 "In the event of a tie within a
14 particular ranking, and if there is
15 insufficient funding available toward
16 all applicants with identical scores
17 in that rank, staff may use random
18 number selection process to determine
19 which of those applicants will be
20 proposed for funding."

21 I think that's really a Board function. We've
22 had numerous situations here, a situation with Santa Cruz
23 a couple of months ago with grants and stuff. We ought
24 to, as a Board, have the ability to either say that's in
25 keeping with our strategic plan, that's in keeping with

1 the rankings.

2 If they're tied we ought to have that policy
3 call, not some random selection that will determine that
4 we may or may not want to have. And that will determine
5 whether or not we as a Board have in some cases tried to
6 find additional funds for those that were ranked. I
7 think that's a Board prerogative and should remain a
8 Board prerogative.

9 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
10 Eaton. Any other comments.

11 Mr. Medina.

12 BOARD MEMBER MEDINA: I just want to say I'm in
13 total agreement with Board Member Eaton in regard to his
14 comments.

15 I also noted the paragraph regarding geographic
16 distribution of awards and that, concerned that the staff
17 has enacted a geographic distribution provision. This is
18 something that even though we had a discussion on, I
19 don't know that we exactly voted to impose this.

20 I know that when I was at Caltrans, in regard to
21 the distribution of transportation dollars that it
22 certainly was not biased in favor of the northern part of
23 the state receiving the bulk of those monies.

24 And I think that the distribution should be
25 based on the efforts, needs, and overall diversion rates,

1 and not so much a strict 60/40 split between north and
2 south.

3 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
4 Medina.

5 LEGAL COUNSEL TOBIAS: Madam Chair.

6 BOARD CHAIR MOULTON-PATTERSON: Yes, Ms.
7 Tobias.

8 LEGAL COUNSEL TOBIAS: May I comment on the
9 issue of how to deal with the tie? While I understand
10 what Board Member Eaton and Board Member Medina were
11 saying on that, I think it's important that the Board
12 decide ahead of time how they would like to deal with a
13 tie. They can choose any criteria they'd like, including
14 looking for other funds or whatever; but I think that
15 staff is trying to respond to the Board's concerns that
16 have been raised over some of the other programs where we
17 have, where we have a ranking.

18 Legal has encouraged both staff and the Board to
19 basically come up with a method of dealing with tie
20 votes.

21 So I don't think, I think it's totally up to the
22 Board in what method they choose to use, but I think that
23 it would be a good idea to make sure that the applicants
24 know prior to the time that that program goes out how we
25 are going to resolve the ties.

1 BOARD CHAIR MOULTON-PATTERSON: Thank you, Ms.

2 Tobias.

3 Mr. Eaton, do you want to respond?

4 BOARD MEMBER EATON: I think that a tie should
5 be brought forth to the Board, that's the whole very
6 point, very crux, very core of the decision that that
7 should not be left to staff. Bring it forward, identify
8 it as a tie, notify each that they are a tie, and that
9 the Board will weigh the relative merits of it, and that
10 everyone is on board.

11 And furthermore, there's nothing in the criteria
12 right here that even talks about either the ineligibility
13 or the tie.

14 LEGAL COUNSEL TOBIAS: I didn't understand your
15 last point.

16 BOARD MEMBER EATON: There's nothing in here.
17 So you're going to do it in a cover letter? I mean this
18 is what, this is another problem we had. This is in the
19 paragraph right here where you've got to lay out what
20 applicants must do.

21 MS. WEIMER: Are you talking -- I'm sorry.

22 BOARD CHAIR MOULTON-PATTERSON: What page are
23 you on?

24 BOARD MEMBER EATON: I'm just on the front page
25 of the attachment one.

1 BOARD CHAIR MOULTON-PATTERSON: Okay.

2 BOARD MEMBER EATON: Which actually is the
3 scoring criteria that the jurisdictions would go off of.

4 MS. WEIMER: The applicants are actually
5 informed in the actual application package.

6 BOARD MEMBER EATON: Right.

7 MS. WEIMER: There is a preface to the actual
8 application.

9 BOARD MEMBER EATON: Correct. And as you have
10 right here, "The Board reserves the right to reduce the
11 amount of any grant." Then you could also read, "In the
12 event of a tie, the Board will determine which, if any,
13 you know, grants are allowed."

14 We may want to split the bathwater, and that is
15 the procedure and that is the process that I would
16 propose. Not that it be determined in some bowl of
17 administrative random selection. So what is the random
18 selection if two people tie, it's 50/50? That's a coin
19 toss? That's not really random selection, that's a coin
20 toss. One out of three? Hmmm, I don't know. You know.

21 So I think in case of a tie, when it can be
22 clearly laid out, it will come before the Board, the
23 Board will determine.

24 LEGAL COUNSEL TOBIAS: I'd say from a legal
25 standpoint, I think that because we are basically trying

1 to ensure that these projects are ranked, that it's
2 important to come forward with a ranking. I also think
3 in the long run it might be a benefit to the Board to
4 make sure that all these programs use the same approach
5 to resolve any ties.

6 I think over the last couple of years we've had
7 several different discussions at the Board level with
8 different agenda items with different ways of resolving
9 that, and I think staff is simply trying to respond to
10 that issue.

11 BOARD CHAIR MOULTON-PATTERSON: So Ms. Tobias,
12 if we said all ties will come back to the Board, would
13 that take care of it?

14 LEGAL COUNSEL TOBIAS: You can do that but I, I
15 think it would be preferable to have some criterion or
16 criteria that basically said how the Board was going to
17 deal with that.

18 For some of the programs in the past the Board
19 has chosen to put applications over into the next grant
20 program cycle, making them kind of first on the list, you
21 know. We've done different kinds of things. And, you
22 know, I'm the first to agree and understand that the
23 Board, you know, would like to have some flexibility.

24 On the other hand, we're trying to balance here
25 the, you know, we go through a fairly rigorous ranking

1 procedure in order to be fair to all the applicants, and
2 then submit those to the Board. So it's this place right
3 here where the Board is adopting a criteria that's
4 really, you know, helps the Board set out what the
5 criteria should be, and then directs the staff to
6 actually carry out that process. And that's, that's the
7 safest way to do that.

8 BOARD CHAIR MOULTON-PATTERSON: Mr. Eaton, we
9 can either have you, you know, I think you found
10 agreement on the Board, but we can either have you make a
11 motion or we can take our lunch break and do it right
12 after lunch. What's your pleasure?

13 BOARD MEMBER EATON: I'm happy to make the
14 motion right now. And I just want to make sure --

15 BOARD CHAIR MOULTON-PATTERSON: Okay.

16 BOARD MEMBER EATON: -- that, that we look at it
17 just a minute just to make sure.

18 My understanding is that it's two issue areas,
19 and I'm just looking at them real quickly. That the
20 ineligibility provision is not anywhere in the criteria
21 attachment, that's my understanding, is that correct?

22 MS. WEIMER: The issue we first talked about,
23 about applying a second time being ineligible? That is
24 not in the attachment. This information would be
25 currently considered in the actual application package,

1 but we can certainly remove that.

2 BOARD MEMBER EATON: I'm just making sure that
3 what happens is, I'm trying to read the resolution so
4 that the resolution doesn't refer to not only the
5 criteria but staff's recommendations within the item.
6 Because that bootstraps up ineligibility as well as the
7 case of a tie of random selection.

8 So I will just move that we adopt Resolution
9 2001-314 and eliminate from that process the
10 ineligibility provision referred to in the item, as well
11 as in the event of any tie that they should be, those
12 applicants receiving scores that are exactly the same,
13 that those be brought forward in the process, and that
14 the Board will make a determination on a case by case
15 basis to see if they can actually fund all or part of
16 each of those that may find themselves in a situation of
17 being tied based upon a criterion.

18 BOARD MEMBER JONES: I second that.

19 BOARD CHAIR MOULTON-PATTERSON: Okay. Motion by
20 Mr. Eaton with the explanation he gave, seconded by Mr.
21 Jones to approve Resolution 2001-314.

22 Please call the roll.

23 BOARD SECRETARY VILLA: Eaton?

24 BOARD MEMBER EATON: Aye.

25 BOARD SECRETARY VILLA: Jones?

1 BOARD MEMBER JONES: Aye.

2 BOARD SECRETARY VILLA: Medina?

3 BOARD MEMBER MEDINA: Aye.

4 BOARD SECRETARY VILLA: Paparian?

5 BOARD MEMBER PAPARIAN: Aye.

6 BOARD SECRETARY VILLA: Moulton-Patterson?

7 BOARD CHAIR MOULTON-PATTERSON: Aye. Motion

8 approved.

9 Thank you, Ms. Weimer.

10 MS. WEIMER: Thank you.

11 BOARD CHAIR MOULTON-PATTERSON: We will take our
12 lunch break now. The Board will come back at 1:30 for a
13 short closed session, and then we'll take up 11 through
14 17 after lunch.

15 (Thereupon the luncheon recess was taken.)

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1 AFTERNOON SESSION

2 --oOo--

3 (Thereupon a closed session was held.)

4 BOARD CHAIR MOULTON-PATTERSON: We'll go ahead
5 and get started. I apologize to the audience, I didn't
6 think we'd be quite so long in the closed session.

7 Ex-partes, Mr. Eaton.

8 BOARD MEMBER EATON: I just said a quick hello
9 to Denise Delmatier when I was walking back from lunch,
10 nothing of any real substance.

11 BOARD CHAIR MOULTON-PATTERSON: Thank you.

12 Mr. Jones.

13 BOARD MEMBER JONES: Denise Delmatier.

14 BOARD CHAIR MOULTON-PATTERSON: I have none.

15 Mr. Medina, any ex-partes?

16 BOARD MEMBER MEDINA: I do have some --

17 BOARD CHAIR MOULTON-PATTERSON: We'll skip until
18 you have a moment to get settled.

19 Mr. Paparian.

20 BOARD MEMBER PAPARIAN: None.

21 BOARD CHAIR MOULTON-PATTERSON: Mr. Medina, are
22 you ready?

23 BOARD MEMBER MEDINA: Madam Chair, I have
24 three. A letter from Waste Management dated July the
25 24th relative to captive insurance.

1 A letter from Burt, Williamson & Sorenson
2 regarding agenda item number one.

3 And a fax transmittal from County Sanitation
4 District of Los Angeles regarding alternative daily
5 cover, and that's dated August 13th.

6 BOARD CHAIR MOULTON-PATTERSON: Thank you.
7 We're on item number 11, administration, discussion of
8 and request for direction on proposed change to point of
9 collection of Integrated Waste Management fee for waste
10 exported out of state.

11 MS. PACKARD: Thank you, Madam Chair.

12 BOARD CHAIR MOULTON-PATTERSON: Ms. Packard.

13 MS. PACKARD: Rubia Packard of the Policy and
14 Analysis Office. And Bobbie Garcia will be presenting
15 this item.

16 BOARD CHAIR MOULTON-PATTERSON: Thank you.

17 MS. GARCIA: Hi, I'm Bobbie Garcia of the Policy
18 Office.

19 At the June 19th-20th, 2001 Board meeting, as
20 part of the consideration on whether to raise the
21 Integrated Waste Management fee, the Board directed staff
22 to prepare an agenda item for September that would be
23 looking at issues related to the waste export and point
24 of collection, as well as other key issues that were
25 identified.

1 The Board further directed staff to hold a
2 workshop in August, 2001 in order to gather the
3 information on these issues, and to present this before
4 the industry, local government, and the public that would
5 look at waste export inequities, the inert waste stream,
6 and point of collection issues.

7 Today's item that's before you presents for
8 Board discussion and direction a status of waste export
9 in California; equity issues related to waste being
10 exported out of state; and possible solutions to address
11 these inequities, which would include changing the point
12 of collection for waste being exported out of state to
13 capture an equitable IWM or Integrated Waste Management
14 fee on these wastes.

15 This item has been limited to waste export
16 primarily because the issues associated with waste export
17 are distinct from those other issues that are related to
18 the IWM fee, and because their complexity warrants the
19 separate attention.

20 The information for the item was gathered from
21 previous workshops that were solicited by the Board on
22 the issues, removing the need for an additional workshop
23 in August, 2001.

24 The Board sponsored the workshops in March, 1998
25 to gather information on equity issues related to waste

1 export. The workshops were attended by representatives
2 of industry, local government, and the public.

3 The information that was gathered at the
4 workshops was presented to the Board on August, '98 at a
5 Board meeting where the Board directed staff to explore a
6 legislative concept. That concept was put into, was
7 prepared for legislation but was not approved for
8 introduction.

9 The information gathered from the workshops is
10 still valid today since the key issues that were
11 identified back at that time are still issues of today.

12 Summarized, these are:

13 Number one, jurisdictions that do not export
14 waste and then pay the Integrated Waste Management fee
15 are placed at a disadvantage to those who do; especially
16 when competing for grants and loans; for competing for
17 contracts to dispose of California waste; and when
18 competing for other solid waste activities.

19 Number two, there are no circumstances where it
20 would be equitable not to pay the Integrated Waste
21 Management fee.

22 Number three, limiting or completely denying
23 benefits to jurisdictions that export waste is not a good
24 idea. The Board is considered a regulatory agency that
25 has been designed and mandated to assist local

1 governments in achieving their goals. Denying these
2 benefits could further delay different jurisdictions in
3 reaching their 50 percent diversion mandate. And
4 limiting benefits could threaten programs that are
5 intended to protect public health and safety.

6 The key points that I would like to raise today
7 are that the major funding source for the Board's
8 programs, most of the Board's programs is the Integrated
9 Waste Management account which is funded by the tip fee
10 which is collected from the disposal of waste at
11 permitted landfills.

12 Several counties have chosen to export a portion
13 or all of their waste out of state for disposal and are
14 not paying for the tip fee for the IWMA for this waste.

15 Looking at this overhead, here is a summary of
16 waste that was exported from 1995 to the year 2000, and
17 you'll notice that the amount of revenue has almost or
18 more than, I should say, doubled from 1995 to the year
19 2000. And this trend is probably going to continue even
20 though it keeps changing back and forth what
21 jurisdictions are exporting, it is continuing to grow.

22 Counties that do not pay the IWM fee for
23 exported waste continue to receive almost all of the
24 services funded by the Integrated Waste Management
25 account, giving them an advantage over other counties

1 that do not pay the fee.

2 And let's see. There's a handout before you
3 that's a table that shows all the different wastes. And
4 please look at your handout, it shows some of the
5 inequities. And what I'd like to bring to your attention
6 is if you look at twelve, thirteen, and fourteen, that is
7 Riverside, Sacramento, and San Bernardino. You'll note
8 that their tons of total waste disposed is about the
9 same, there are about a million and a half tons per year.
10 But if you look at how much waste they're exporting, it
11 varies considerably.

12 MS. PACKARD: Just a note for the public, this
13 is the chart that is in the item, and it's a list of all
14 of the counties that are exporting waste out of state.
15 So it's also, it's also listed in the item.

16 MS. GARCIA: And there is a handout at the back
17 of the room as well.

18 BOARD CHAIR MOULTON-PATTERSON: Is the handout
19 the same? I can't find the one in the item. Is the
20 handout the same?

21 MS. GARCIA: The handout is a little bit
22 different. What I added in was the percentages so that
23 you could see out of their total waste that they're
24 disposing, how much is actually being exported out of
25 state, which is really a good indicator of how much

1 they're contributing to the tip fee.

2 So for Riverside, Sacramento, and San
3 Bernardino, you notice for San Bernardino they're
4 exporting a very small amount, 6,000 tons, so they're
5 still contributing a large portion to the tip fee.
6 Whereas Sacramento, at 25 percent, that's quite a loss in
7 funds going into the tip fee, even though they're all
8 three very similar in the amount of waste they're
9 disposing.

10 Some of the jurisdictions are actually exporting
11 a very high percentage of their waste stream out of the
12 area, and those include El Dorado at 96 percent, Humboldt
13 at 86 percent, Modoc County at 99 percent, and Nevada at
14 76 percent. In these cases they're contributing a very
15 small amount of funds into the tip fee, but they are all
16 eligible to receive the services that the Board provides
17 through the IWMA account.

18 And what isn't shown on this chart are the 38
19 companies that are paying the tip fee and do not export
20 waste. That would include counties such as San
21 Francisco, Santa Barbara, Santa Clara, and Los Angeles.
22 All of these are paying the full tip fee and receiving
23 the services that the state offers.

24 An equity fee would close an existing loophole
25 that currently allows jurisdictions that export waste to

1 receive services without paying their fair share of the
2 cost of those services.

3 The equity fee would not be a new fee charged
4 for waste that is exported, instead we would now be
5 collecting the existing fee the jurisdiction should be
6 paying. The fee would be commensurate with the services
7 received by the jurisdiction minus a discounted rate for
8 those services tied to disposal.

9 And looking at the overhead, what it shows is
10 this is a calculation that staff has done to come up with
11 a discount fee calculation. And what the staff did is we
12 went back and we identified the main areas or activities
13 that the Board undertakes that are related to the
14 oversight at active landfills only; and then looked at
15 the percentage of time that is spent on overseeing those
16 active landfills; and then what the cost is from the IWMA
17 account for those activities. And then dividing that by
18 the Board's total IWMA budget, it came out with the rate,
19 the discount rate that we are just showing as an example
20 which is at 5.2 percent.

21 So if you were to apply that rate into the
22 current 1.34 fee that we have today, that would bring the
23 fee, the equity fee would be 1.27 to those, for that
24 waste that is exported out of state. And if you, for the
25 1.40 that would take effect July 1st of next year, it

1 would be at 1.32, if you were to apply a 5.2 percent
2 discount.

3 This item proposes to change the point of
4 collection to transfer stations and MRF's only for waste
5 that is transported out of the state for disposal.

6 For waste disposed within the state, the tip fee
7 would continue to be collected at landfills.

8 Nearly 750,000 tons of waste were exported to
9 out of state landfills in 2000, resulting in a loss of
10 nearly one million dollars in tipping fee revenues.

11 Changing the point of collection for waste that
12 is disposed outside the state could generate more than
13 one million in fees deposited into the IWMA account.

14 This item is for discussion purposes only, and
15 to elicit further direction from the Board. Options for
16 the Board include:

17 One, direct staff to pursue a legislative
18 proposal that would change the point of collection for
19 solid waste being exported out of the state to capture an
20 equitable IWM fee on these wastes.

21 Or two, direct staff to provide additional
22 information and bring the discussion back to a future
23 meeting of the Board.

24 Or three, direct staff that no further action is
25 required.

1 And we recommend one which would be to direct
2 staff to pursue a legislative proposal that would change
3 the point of collection for solid waste being exported
4 out of the state to capture an equitable IWM fee on these
5 wastes.

6 Thank you.

7 BOARD CHAIR MOULTON-PATTERSON: Thank you, Ms.
8 Garcia.

9 Questions before we go to our speakers? Or
10 comments?

11 Okay. We have a number of speakers on this
12 item. I'll start with Mark Aprea with Republic Services,
13 Inc.

14 MR. APREA: Good afternoon, Madam Chair, members
15 of the Board. I'm Mark Aprea representing Republic
16 Services, Inc.

17 I wanted to have the opportunity to talk to you
18 today about the fee issue. We registered our opposition
19 to move forward with this proposal on the same basis that
20 we had opposed the fee increase from \$1.34 to \$1.40 that
21 the Board adopted a couple of Board meetings back.

22 The concern that we have is that the Board has,
23 in our opinion, not clearly outlined its programmatic
24 obligations and spelled out the financial need to fulfill
25 those obligations.

1 That is, when the Board raised the tip fee from
2 \$1,34 to 1.40, the reason stated then that this fee
3 increase was needed to make up for the loss of revenue
4 due to diversion and the loss of revenue due to
5 inflation. But the Board, in adopting the fee increase
6 from \$1,34 to \$1.40, commented that these funds were now
7 to be used for energy related purposes and other
8 purposes. In our minds it is unclear as to where the
9 Board wants to go with any new revenues that it may
10 acquire.

11 We do not dispute that there are many worthy
12 programs that the Board may wish to pursue. We ask for
13 one simple thing, that before there is any change, either
14 to the fee structure or how fees are collected, that the
15 Board provide for the public a clear understanding as to
16 where it is going and how these new funds will be
17 expended before those changes are adopted.

18 Thank you, Madam Chair and members of the Board.

19 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
20 Aprea.

21 Denise --

22 BOARD MEMBER JONES: Madam Chair, can I ask Mr.
23 Aprea a question?

24 BOARD CHAIR MOULTON-PATTERSON: Excuse me, Mr.
25 Jones.

1 BOARD MEMBER JONES: Mr. Aprea, I'll ask you the
2 question, it will sort of go to the heart of the issue
3 for a lot of people.

4 MR. APREA: Yes, sir.

5 BOARD MEMBER JONES: One of the concerns back
6 along, when AB 688 came along and these fees were, or
7 this import issue or export issue was part of it, was the
8 fairness issue.

9 Now, we had a workshop I think two years ago
10 where everybody came forward and agreed that we needed to
11 change the point of collection. And the driving force
12 behind that was all of the jurisdictions are taking, are
13 able to come in and get grants and other programs that
14 the Board provides.

15 The concern has always been if just those
16 companies that operate within the State of California are
17 paying the fee, then the 1.40 ends up at some point
18 having to go higher. Because as more and more waste is
19 being exported, and fees aren't being paid on them, then
20 obviously the fee falls on those that remain.

21 And part of this, part of this exercise is to
22 try to, is a fairness issue to try to make sure that, I
23 don't know how many outside of the state facilities
24 Republic has, but I know they have a heck of a lot inside
25 the state.

1 And as long as waste generated in California is
2 all paying a fee, then it kind of gets spread to
3 everybody. But when it just goes out, and those
4 jurisdictions want the same services that the Board are
5 getting, I think that all the companies and all the local
6 governments need to be thinking that they're paying the
7 fees when others aren't, and yet everybody gets the same
8 services.

9 And it's an equity issue that I think really
10 needs to go, is at the heart of this whole discussion.

11 MR. APREA: Mr. Jones, if I can respond to it.
12 Again, as I stated in my, in my statement, it is not that
13 we are opposed, per se, to anything that's been proposed
14 before this Board right now. I'm also not going to
15 dispute with you the equity issue.

16 The concern that my client has and that was
17 expressed when we had a conference call on this issue
18 last Friday, the question was, "Where's this going?" In
19 other words, in light of the, of the discussion that was
20 had relative to the increase of the fees a couple of
21 months ago, this was then part of that discussion going
22 back in terms of the original. We're, and then, you
23 know, in other words this issue, in other words these are
24 being sort of put together, in our view, piecemeal.

25 Coupled with that, and again, not being critical

1 of them, but we heard that initially the fee increase to
2 a buck, from 1.34 to 1.40 was needed to take into
3 consideration inflationary pressures and the rate of
4 diversion.

5 Then we also heard that there were other
6 significant issues raised by several Board members that
7 these funds could be used for additional purposes.

8 The question that we posed to you all is what's,
9 you know, give us the blueprint or the road map, if you
10 would, as to where you want to go, so as we look at these
11 things we have a clear understanding.

12 Remember too that another Board member suggested
13 that the tip fee be increased to two dollars per ton.
14 And now we're looking at a statutory change to change the
15 point of collection.

16 So there are a lot of these pieces that are
17 moving around with no, and from our vantage point, that
18 there doesn't seem to be a cohesive plan in terms of
19 where to go.

20 Clearly there's the objective that this Board
21 wants to achieve as much revenue realization as
22 possible. We, I mean if that's the objective then we
23 should just state that and that; in other words, that the
24 Board will then find any and all means that it has before
25 it to pursue those.

1 But what we would suggest is is that the Board
2 have a plan and say these are the programs that we need
3 to address, this is the budget that we need to address
4 it, either we've got a surplus or a shortfall, and then
5 let's decide how we're going to address that shortfall,
6 if that's the case. And then we also recognize the long
7 term issues that if we're going to see a continued
8 decline in disposal, that we have a long-term plan so
9 that we're not constantly having to find new sources of
10 revenue.

11 Let me also suggest that, with regard to this
12 issue, that we have as much certainty as we can that this
13 change would survive a Carbone test. And I know the
14 staff report has indicated such, but what you don't want
15 to have happen is that you adopt this change, it's then
16 challenged by someone, and then it is overturned, and now
17 you're a million dollars short because you've gone out
18 and, you made plans and you've made commitments on behalf
19 of the Board to expend these funds.

20 So I'm not disputing with you, Mr. Jones, or
21 anyone else, that there is an equity issue. If there's
22 any sentence that I can crystallize my concern is, where
23 are we going? And if that question can be answered in
24 terms of a very public fashion, and we understand where
25 we're going and what we need in the way of funding, then

1 I think that from that point we can all be constructive
2 in our approach to this as opposed to merely having to
3 come up here and oppose a proposal that's before you
4 today.

5 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
6 Aprea.

7 Denise Delmatier.

8 MS. DELMATIER: Madam Chair, members of the
9 Board, Denise Delmatier with NorCal Waste Systems.

10 I'd like to echo some of the comments by Mr.
11 Aprea, but I'd also like to express support for
12 addressing the fee equity issue.

13 And at the Board hearing a couple of months ago
14 when we talked about raising fees, we testified that this
15 was a critical component, and urged the Board to address
16 this issue before going forward with the raise in fees.

17 So I guess what I'd like to do in looking at the
18 chart that's behind you there and probably on your
19 screens in front of you, is support option number one for
20 the 1.34. And in other words, to change the point of
21 collection at the 1.27 rate, but reserve support on the
22 1.40. And echo Mr. Aprea's comments that we'd certainly
23 like to see a realistic spending plan and, with specific
24 needs addressed as far as the long term. If that makes
25 sense?

1 Thank you.

2 BOARD CHAIR MOULTON-PATTERSON: Thank you.

3 Mike Mohajer, L.A. County.

4 MR. MOHAJER: Madam Chairs, member of the Board,
5 my name is Mike Mohajer and I represent L.A. County
6 Public Works.

7 Three years ago I think it was, maybe three and
8 a half years ago, that was my first meeting that I
9 attended, a workshop that the Waste Board conducted on
10 this issue with Mr. Eaton and Mr. Jones down in Burbank.
11 And I thought at that time that that was my first
12 assignment of the expanded assignment of what I'm doing
13 now, that is a really easy task and can be addressed
14 right away and that things will get done right away. And
15 that was over, back in '98. And we're still addressing
16 the same issue.

17 So I, basically our position is echoing what Mr.
18 Aprea says, the, sort of a qualified support for the
19 staff recommendation, item one. And the qualified
20 support, the qualification basically is that we also want
21 to know ultimately what these funds is going to be used
22 for.

23 And, as indicated in the staff report in the
24 first paragraph under summary, we want to make sure that
25 there will be a workshop also addressing the inert waste

1 issues, and I don't know how that is listed.

2 But having said that, we are in support of the
3 staff recommendation number one.

4 Thank you.

5 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
6 Mohajer.

7 Paul Yoder, SWANA.

8 MR. YODER: Thank you, Madam Chair and members.

9 SWANA support the staff recommendation, item
10 one. The current situation is fundamentally inequitable,
11 I just don't know how anyone could take issue with that.

12 I do, for the record, want to note that SWANA is
13 sympathetic to most, if not all of the issues raised by
14 the previous speakers.

15 Lastly, just one technical comment. It's sort
16 of deja vu all over again, I swear the last time this
17 issue was before the Board I asked that, that the
18 breakdown not be just by county because not, because not
19 just counties export waste and, clearly cities export
20 waste. And some of these numbers, when it's listed as a
21 county number when, in fact, in whole it is a city
22 number. And I just think there are, there are different
23 entities, they have different purposes, different
24 political structures, and I just think you ought to, it
25 would be simple enough to break them out. And I would

1 just ask that courtesy in future discussions.

2 Thank you.

3 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.

4 Yoder, that's a good point.

5 Can we do that?

6 MS. PACKARD: Yes, we certainly can.

7 BOARD CHAIR MOULTON-PATTERSON: Thanks.

8 MS. PACKARD: The only reason we didn't is
9 because then the chart becomes three or four pages long.
10 So we do have that information.

11 And he is right, there are counties where it is
12 simply one city that is exporting their waste and the
13 rest of the county is not. So this was just for the
14 purposes of summarizing the information. We can
15 certainly break it out.

16 BOARD CHAIR MOULTON-PATTERSON: Thank you, Ms.
17 Packard.

18 Okay. That concludes our speakers. Board
19 members, questions? Comments?

20 BOARD MEMBER EATON: I have a couple --

21 BOARD CHAIR MOULTON-PATTERSON: Mr. Eaton.

22 BOARD MEMBER EATON: -- a couple of comments.
23 Thank you, Madam Chair.

24 It was mentioned the historical perspective,
25 this issue has been around for some time. But if we are

1 to proceed, I think echoing some of the comments made by
2 the speakers, it would be in order in a sense that we
3 should really take a look at, if not on this issue at
4 least in the upcoming issues as to what our blueprint and
5 our road map will be.

6 But more importantly, I also wanted to
7 distinguish, for instance, Alpine County. I think the
8 last time I checked it was about 1,200 individuals up
9 there which existed, and I'm not sure how many funds, if
10 any, Alpine County has ever received from this Board.

11 But if we do go through with any proposal, what
12 I would like to have included in the proposal is a
13 mechanism by which counties or cities -- see, I did
14 listen, Mr. Yoder, unlike what you said about other past
15 instances -- is that we allow for some mechanism for an
16 application to either be exempt or reduced fee.

17 Alpine County, as you well know, is situated
18 geographically, some of these cities are located, or
19 counties are located geographically where it would not be
20 cost effective nor would it be advantageous to that local
21 jurisdiction to actually deposit the waste in state.

22 Given especially too some of the meteorological
23 and weather conditions that may arise. There could be a
24 storm that takes place and they're not able to get there.

25 And in many cases also, I can think of an

1 example wherein perhaps maybe a lot of the Eastern Sierra
2 where they're closing a lot of the landfills there
3 because they aren't lined, because of health and safety,
4 they aren't putting the money into those landfills but
5 rather taking it somewhere else, either across county
6 lines or in some cases out of state. So we have some
7 process by which we as a Board can look at that
8 individually on a case by case basis and make that
9 determination as well because I think that that's equally
10 as important.

11 And I don't want to get confused because, in the
12 oil fund, for instance, they do pay the oil fund, so I
13 don't want to mix apples and oranges here, but there are
14 a lot of money going out the door in fees in some of
15 these jurisdictions.

16 In other jurisdictions, as you can see by the
17 list, there is no excuse, and there should be no process
18 by which they are allowed to escape their participation
19 because they do receive a tremendous number of benefits.

20 But if we could at least carve out and instruct
21 staff, since today is for direction, that whatever
22 proposal is developed, that there is some sort of process
23 by which the Board can make a determination as to whether
24 or not circumstances exist which would allow the export
25 of waste.

1 Now, whether or not we collect on that is a
2 different story. I'm not talking about that. But at
3 least in terms of being able to go out, I think that's a
4 process that it would be fair and equitable to those
5 counties. Or there may be a particular situation.

6 BOARD CHAIR MOULTON-PATTERSON: So you're
7 talking about very special circumstances?

8 BOARD MEMBER EATON: It would be extremely
9 special circumstances, you know, based on geography
10 sometimes, you know. I think we even have a situation
11 which became a thorn in the side for this Board, one
12 Northern California county which had a problem at their
13 particular facility that had to go up into Oregon for a
14 short period of time, and things of that nature due to
15 some things we did as a Board.

16 And it's just, I don't think it's a, we are
17 really probably talking about the smaller, smaller
18 counties geographically located on the perimeter, not
19 something on the interior, but it would be a good process
20 to be looked at.

21 Thank you.

22 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
23 Eaton.

24 Mr. Medina and then Mr. Paparian.

25 BOARD MEMBER MEDINA: Thank you, Madam Chair.

1 And I agree with Board Member Jones that there exists
2 serious equity issues. I'd also like to point out that
3 there also exists serious environmental justice issues
4 related to the location of landfills where the waste
5 eventually is placed.

6 And I'm particularly disturbed in looking at
7 table two on page 11-5 that our own backyard, the County
8 of Sacramento, is responsible for approximately 40
9 percent of the waste that's exported out of state.

10 I don't know if it's appropriate to send a
11 letter or some message or something to the county that,
12 you know, this --

13 BOARD MEMBER JONES: It's the city.

14 BOARD MEMBER MEDINA: The city, it is
15 particularly disturbing.

16 BOARD CHAIR MOULTON-PATTERSON: Yes, it is.

17 BOARD MEMBER MEDINA: And I also am supportive
18 of staff recommendation one.

19 BOARD CHAIR MOULTON-PATTERSON: Okay. Thank
20 you, Mr. Medina.

21 Mr. Paparian.

22 BOARD MEMBER PAPARIAN: Following up on Mr.
23 Eaton's suggestion regarding some of the counties who may
24 not have or may have special circumstances. It's an
25 intriguing idea, the one issue I bring up, is if they

1 were to get relief from the fee, it would seem that they
2 would then at the same time have to agree to getting
3 relief from the potential of getting grants from us that
4 are paid for from that fee.

5 So, you know, if tiny Alpine County agreed that
6 they wouldn't pursue a grant paid for by the IWMA fee,
7 then maybe we could entertain something like that.

8 The other, the question, one question I had is
9 just looking at the current situation, I guess this is
10 for legal counsel, is it possible to consider a
11 locality's contribution to the fee in awarding grants to
12 that locality?

13 CHIEF LEGAL COUNSEL TOBIAS: I'm trying to
14 decide who's going to answer that question.

15 Go ahead.

16 BOARD MEMBER JONES: Mr. Paparian, while they're
17 trying to figure that out, can I throw something out
18 there? This was a question that was asked by a Board
19 member a long time ago, and I don't think it was Mike
20 Mohajer, I think it was actually Jack Michaels that came
21 forward and talked about the fee that L.A. County paid
22 every day. And it was a large portion of what the
23 Integrated Waste Management fee would be. And I think
24 that we got really nervous about the fact that dollars
25 would go where fees were collected, because it would mean

1 the cities of San Francisco, San Jose, L.A., San Diego,
2 would really capitalize, or would really, you know, their
3 fees help pay for an awful lot of programs that are going
4 on throughout the state.

5 Just thought I'd throw it in while they were
6 trying to figure out who was going to answer the
7 question.

8 BOARD MEMBER PAPARIAN: I'm sure the people of
9 Humboldt County are very thankful to the people of Los
10 Angeles for their contributions, and San Francisco.

11 BOARD CHAIR MOULTON-PATTERSON: Thank you. I
12 guess it's Mr. Block.

13 LEGAL COUNSEL BLOCK: Elliot Block for the legal
14 office. I guess I have a two part answer to that.

15 The theoretical legal answer is that yes, we
16 could look at issues like that, particularly in the
17 context that we're talking about, we're talking about a
18 proposed legislative change, so there are certainly some
19 ways to go about doing that.

20 The problem is not so much a legal issue as much
21 as the mechanics of how you do that. And I think the
22 reason that we're hesitant in terms of answering that
23 question is the more, the greater level of detail you go
24 to in terms of looking at fees and how they're set up,
25 similar to what, what Mr. Jones was saying, the more

1 difficult it becomes to actually make that calculation.

2 The legal issue, the legal underpinning to the
3 whole issue is that the fees have to be reasonably
4 related to the purposes that they are serving, if you
5 will. A little equity idea. So there's no requirement
6 that they be exact; there's no requirement that, you
7 know, this be carried out to, you know, infinite decimal
8 places; but there has to be some reasonable relation
9 there.

10 And so, as you start to get into looking at a
11 greater level of detail past something like simply a
12 discount off of the basic fee, it just gets more and more
13 complicated. Theoretically it's possible to do; legally
14 it's possible to do; practically it may get more
15 difficult. And you add a complexity to that, and it
16 increases the number of statutory changes you potentially
17 need to make.

18 You know, you're going from simply making one
19 change potentially in terms of the overall fee that's
20 collected, to potentially making a number of changes in a
21 number of grant programs. That's the crux of why that's
22 a little bit more difficult.

23 But I don't know if that answered your question
24 or not?

25 BOARD MEMBER PAPARIAN: It gets at a lot of it.

1 Thank you.

2 BOARD CHAIR MOULTON-PATTERSON: Anyone else? I
3 think --

4 MS. PACKARD: Madam Chair, could I just say one
5 thing?

6 BOARD CHAIR MOULTON-PATTERSON: Yes.

7 MS. PACKARD: Part of what we looked at
8 originally when we had the workshops was that very issue
9 about looking at grants and loans, etcetera.

10 And based upon the information that we got in
11 the discussions it became really clear, and obviously our
12 fee supports far more than just grants and contracts and
13 loans. There are all sorts of other activities that the
14 Board is engaged in that that fee supports, and it would
15 be really difficult to separate out just that one
16 activity, whether it's a grant, contract, or loan, from
17 all the other activities that the Board is conducting to
18 try and base that, you know, removal of that service.

19 So it would be, I agree with Mr. Block, it would
20 be very difficult to do that.

21 BOARD CHAIR MOULTON-PATTERSON: Thank you. Mr.
22 Eaton.

23 BOARD MEMBER EATON: Can I ask one question?
24 Mr. Schiavo, do we in our annual reports or anywhere else
25 require that the jurisdictions tell us how much waste

1 they export?

2 MR. SCHIAVO: It's inherent in the disposal
3 reporting system.

4 BOARD MEMBER EATON: But I mean do they
5 specifically, is it a separate line item?

6 MR. SCHIAVO: When it's reported to the
7 counties. And then it's --

8 BOARD MEMBER EATON: I'm trying to solve Mr.
9 Block's problem here by trying to find how much the level
10 of detail you have. If it's, if you can find out, if you
11 have, if you're in the reports, if we don't, and we
12 require that they tell us how much waste is exported, you
13 simply go back to that or whatever document they file.

14 MR. SCHIAVO: Yeah, it's reported to us so we
15 know each jurisdiction's amount of export.

16 BOARD MEMBER EATON: So perhaps each of you
17 should get together and maybe figure out a way that that
18 seems to solve your problem.

19 MS. PACKARD: We certainly have the information
20 on how much is exported by each jurisdiction. It's the
21 commensurate amount of services statewide, that we
22 provide statewide, things that we do statewide like
23 market development that aren't necessarily targeted at
24 just one jurisdiction that we can now withdraw those
25 services.

1 I think that's mainly what I was talking about
2 is services that we provide that are intended to benefit
3 the entire State of California, and how do you determine
4 what portion of that you then withdraw from a
5 jurisdiction because they're exporting X amount of waste?

6 BOARD MEMBER EATON: I'm on the collection side,
7 I must have maybe misunderstood you.

8 MS. PACKARD: Thanks.

9 BOARD CHAIR MOULTON-PATTERSON: Not hearing
10 otherwise, I think the Board unanimously is in agreement
11 of supporting your staff recommendation to pursue a
12 legislative proposal. And certainly we want to give
13 industry our blue plan -- blueprint for how we would be
14 spending, you know, this money, and it's not our intent
15 not to.

16 MS. PACKARD: Hopefully we can continue to do
17 that with the next item on the strategic plan. I just
18 want to clarify that proposal, the legislative proposal
19 that you want us to pursue is to include some type of
20 language or authority that would allow the Board to
21 exempt certain jurisdictions based upon some type of
22 determination of good cause that they are not required to
23 pay the fee on the waste export, is that correct?

24 BOARD MEMBER EATON: Or reduced fee or
25 something, put a fee mechanism in, you know.

1 MS. PACKARD: Okay. Okay.

2 BOARD MEMBER PAPARIAN: My suggestion was if we
3 pursue that, if they're going to, if a locality is going
4 to pursue that, they'd at the same time have to opt out
5 of getting the benefits of that type of a fee. They'd
6 have to agree not to take grants from us that come from
7 that fee.

8 MS. PACKARD: Okay. So you're asking that that
9 concept be included in the leg proposal as well?

10 BOARD MEMBER EATON: Well I think we should
11 flesh it out because in a situation where there's an
12 emergency such as a road closure or snow, that that would
13 be unfair. And that's why I say a case by case basis
14 you'd be able to see that. Because there could be
15 situations that arise that would unduly penalize a
16 jurisdiction for exportation simply if, you know, the
17 roads weren't, you're unable to get the load across and
18 you had to go another place or something like that,
19 that's all.

20 I mean, so there's enough flexibility, I think
21 if you bring it back we'll be able to flesh it out to
22 meet all of your concerns and my concerns as well.

23 MS. PACKARD: Okay.

24 BOARD CHAIR MOULTON-PATTERSON: And I would just
25 like to see, you know, something, very special

1 circumstances, because I wouldn't want everyone to see
2 that there's a big loophole in here.

3 MS. PACKARD: Okay. Thank you.

4 BOARD CHAIR MOULTON-PATTERSON: Okay. Item
5 number twelve. Discussion of and request for direction
6 on the Board's Draft 2001 Strategic Plan.

7 Ms. Packard.

8 MS. PACKARD: Thank you, Madam Chair, Rubia
9 Packard with the Policy Office.

10 I'm here to present agenda item 12 which is a
11 discussion of, as you said, a request for direction on
12 the Board's Draft 2001 Strategic Plan.

13 As you recall, the staff brought forward to the
14 Board a draft of the goals, excuse me, a draft of the
15 vision, mission, values and goals that were drafted
16 through our internal process and our external stakeholder
17 meetings, and received some direction from the Board on
18 that language.

19 We have made the revisions that were requested
20 by the Board to those elements, and are now presenting to
21 you the, all of those revisions as well as additional
22 material that's been developed through cross-divisional
23 teams with representation from the Board members'
24 offices.

25 We have developed objectives and strategies for

1 each of the goals that were approved by the Board. There
2 are three goals that were revised. If you recall, in the
3 previous agenda item there were eight goals.

4 The team that was working on the goal that was
5 related to public health and safety and our Permitting
6 and Enforcement regulatory program, that group revised
7 and merged two goals to come up with goal number four
8 which is on page twelve of your revised agenda item.

9 I put the previous language there below it so
10 that you could see the previous language as well as the
11 current language. So I wanted to bring that to your
12 attention that that is a consolidated goal, previously
13 two goals, and the language is there for you.

14 Goal five, which is the goal regarding our
15 improvement of our internal processes and our efficiency
16 and effectiveness internally in how we do our work was
17 also revised to broaden it a little bit from the language
18 that was there before.

19 We, the language that was provided before
20 focused on communication and technology only, and we felt
21 that we could broaden it and allow ourselves to, to
22 include other opportunities for improvement of how we do
23 our work in addition to communication and technology.

24 Goal number six was also revised. The previous
25 language was a little bit narrower and focused only on

1 our permitting and enforcement, market development, local
2 assistance programs. The administrative and budget
3 decisions was language added by the Board at the last
4 Board meeting.

5 So we revised that goal just to make it broader
6 to address environmental justice concerns in all of the
7 Board's programs and activities, including administrative
8 and budgetary decisions. So it just makes it slightly
9 broader so that we address all our programs.

10 And those were the revisions. So, what we're
11 asking for again today is your review and approval of the
12 work that we've done thus far. If, once we receive your
13 direction and approval of this final set of elements, we
14 will be putting this together into an actual draft final
15 plan for your review and approval and adoption at a
16 future meeting.

17 On Monday we will be presenting, or excuse me,
18 we will have already presented it, but we will be
19 receiving comments and suggestions on our plan from the
20 other Boards and departments through the Cal EPA
21 Strategic Vision Group.

22 And following that, depending upon the direction
23 from the Board and those comments, we will presenting --
24 we will be presenting a final draft plan to the
25 secretary, agency secretary for their review and comment.

1 And then we'll be bringing the entire plan back
2 to you for final adoption, probably in October. I don't
3 think with those two sets of reviews it will make
4 September, we are going to try, but it will probably be
5 October for final adoption of the Board's strategic plan
6 with all of the associated appendices and texts and
7 contexts and all of that.

8 BOARD CHAIR MOULTON-PATTERSON: Okay. Ms.
9 Packard, I just want to, again, as I said at the
10 briefing, compliment you and your staff.

11 Mr. Leary and I and I were at a meeting with all
12 the other BDO's, and you were really singled out as a
13 terrific, you know, that we were a real role model for
14 the other BDO's, and so we were very proud.

15 MS. PACKARD: Well thank you, I don't want to
16 take -- I did make the presentation, however I didn't do
17 all that work. It was done by the teams, and I think
18 they did a great job.

19 BOARD CHAIR MOULTON-PATTERSON: Thank you. And
20 we do have speakers, but do any Board members have
21 questions or comments?

22 BOARD MEMBER MEDINA: The only comment that I
23 had was that I know in our last discussions, did we
24 reconcile the vision where we changed zero waste to
25 sustainable California with goal number seven? Did we

1 decide to leave that in the goal, promote a zero waste
2 California?

3 BOARD MEMBER JONES: I thought we had decided to
4 change it to sustainable at that meeting.

5 MS. PACKARD: We changed -- if I may clarify?
6 What the Board directed that we change in the vision
7 statement, the words "zero waste" to "sustainable." And
8 I believe Mr. Paparian had proposed language that, for
9 goal seven just as it is and the Board approved that.

10 So you changed the phrase "zero waste" in the
11 vision to "sustainable," but you also approved the
12 inclusion of another goal that was about zero waste which
13 is now goal seven.

14 BOARD MEMBER MEDINA: Okay. Thank you.

15 BOARD CHAIR MOULTON-PATTERSON: Thank you.
16 Mark Aprea, Republic Services.

17 BOARD MEMBER EATON: This is a blueprint by the
18 way.

19 (LAUGHTER.)

20 MR. APREA: Thank you, Mr. Eaton. Madam Chair,
21 members of the Board, Mark Aprea representing Republic
22 Services.

23 Madam Chair, could I address Mr. Paparian
24 through the chair?

25 BOARD CHAIR MOULTON-PATTERSON: Certainly.

1 MR. APREA: Mr. Paparian, I just had a question
2 regarding the proposed changes to the strategic plan that
3 you forwarded and I had some questions.

4 What is, you said item nine, "Support national
5 stewardship -- national product stewardship efforts." I
6 have a general sense of what that is but I'm not certain
7 what that is.

8 And what does, "Participating in the institute's
9 work" mean relative to the issues that were enumerated?

10 BOARD MEMBER PAPARIAN: Okay. For everybody's
11 benefit, I was going to bring this up after the public
12 comment, but I've distributed to the Board and there are
13 copies in the back of the room a suggested addition to go
14 along related to product stewardship. Because the Board
15 has, in fact, gotten involved in several product
16 stewardship efforts, including the carpet issue which was
17 discussed this morning, and including the electronics
18 issue which we're involved in as well.

19 The Product Stewardship Institute is run out of
20 the University of Massachusetts at Lowell, and they are
21 coordinating the product stewardship efforts on carpet
22 and electronics, and are looking at some additional
23 product categories, such as paint and possibly some added
24 ones as well.

25 MR. APREA: And what is the work that they are

1 doing? Can you be somewhat descriptive? I'm just trying
2 to report back to folks what this addition means in a
3 broad context.

4 BOARD MEMBER PAPARIAN: Their general M.O. is to
5 bring together states and, as appropriate, localities,
6 with the affected industry and other parties to try to
7 reach agreements and understandings related to product
8 stewardship for the selected products.

9 So in the case of the carpet issue there were a
10 number of states as well as the affected carpet industry.

11 The electronics issue, again a number of states,
12 fifteen states, fifteen electronics companies, and
13 fifteen additional people in that area including
14 recyclers and some that, the environmental groups and
15 some others with an interest in the outcome of the
16 efforts.

17 MR. APREA: Will there be any, in regards to
18 that, Mr. Paparian, will there be any efforts similar to
19 what's being -- well, I mean in terms of some of the
20 proposals that might be out there, would it include
21 something such as a, a fee at the point of purchase that
22 would then be used for purposes of establishing some sort
23 of a recycling effort? How far, I mean in terms of how
24 broad a scope might they be looking at?

25 BOARD MEMBER PAPARIAN: That would, that would,

1 that would presume, the question sort of presumes an
2 outcome almost. I mean anything is possible going into a
3 process like that. And, you know, if all of the parties
4 agreed that that's the way they wanted to go, some point
5 of fee collected at the point of purchase, that might be
6 an outcome.

7 MR. APREA: That's not necessarily on the table
8 at this time?

9 BOARD MEMBER PAPARIAN: I think everything is on
10 the --

11 MR. APREA: Is that one of the options that this
12 product, this National Product Stewardship Institute --

13 BOARD MEMBER PAPARIAN: I can't speak to the
14 carpet issue because I'm not as familiar with that. But
15 in terms of the electronics issue, that is among many
16 options that are out there. But the discussions have
17 just started, there hasn't been a narrowing of the
18 options, it's been more of an identification of the
19 universe of options that are possible rather than a
20 narrowing of the options.

21 MR. APREA: Mr. Paparian, thank you very much
22 for your taking your time with me.

23 Thank you, Madam Chair.

24 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
25 Aprea.

1 Mike Mohajer, L.A. County.

2 MR. MOHAJER: Thank you, Madam Chairs, member of
3 the Board. Mike Mohajer, Los Angeles County Public
4 Works.

5 I basically have a couple of comments, one
6 editorial and one comment. I wanted to know, what does
7 economic, what role does the economic place in adopting
8 this plan or does it have any role? In other words being
9 specific, shouldn't it be considered an impact of the
10 proposal on economic well-being of residents and
11 businesses in the state? So that's my one question.

12 And then the second item was basically
13 editorial. And excuse me while I look it up. But if you
14 look on page 12-4, on the top of the page, mission
15 statement, reduce waste, promote all materials, to be
16 managed at their highest, and protect public health and
17 safety and the environment.

18 I suggest that maybe you want to put down to
19 protect public health and environment at the beginning of
20 the statement, and then to reduce waste follow up.
21 Because really the most important aspect of the whole
22 Board and all of us that are in this business is to
23 protect public health and safety and anything else.

24 Thank you.

25 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.

1 Mohajer.

2 Ms. Packard.

3 MS. PACKARD: I just had one other thing that I
4 forgot to mention if you wouldn't mind.

5 At the briefing I was asked about the comments
6 that were included in the suggestion box on our Board
7 website, and we did go through all those comments. And
8 with the exception of maybe one area, I think all of the
9 comments had the same theme, the same issues, the same
10 concerns, the same focus as the goals and the mission
11 envision and the values; things like waste prevention,
12 waste reduction, research, data collection, leadership
13 within the Board, improving our internal processes; all
14 those same themes are in, are the themes that I saw in
15 those comments. So I think that we've covered most of
16 the things in the comments.

17 There were some things that were pretty specific
18 to individual programs, suggestions as to reorganization
19 of a particular unit or a branch or something like that,
20 to refocus or move them around, those kinds of things
21 that are obviously not addressed in the strategic plan.

22 There were also some concerns about worker
23 health and safety at landfills. And evidence where the
24 public is going, driving through, those things are not,
25 also are not addressed in the plan specifically. So we

1 did take a look at that, and I had said that I would
2 report on that so.

3 BOARD CHAIR MOULTON-PATTERSON: I appreciate
4 that. Thank you for doing that.

5 BOARD MEMBER JONES: Madam Chair.

6 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.

7 BOARD MEMBER JONES: I think that this is a very
8 good strategic plan. I did have one issue I talked to
9 Mr. Paparian about it. Under the values, commitment to
10 the environment. Actually part of the proposal that he
11 offered at the last Board meeting included the addition
12 of "and enforcement," so that should be in red with a
13 line under it, it was one of the issues that we hadn't
14 resolved.

15 I think that commitment to the environment,
16 public health and safety, obviously are our most critical
17 value. I think enforcement is a tool that we use to, to
18 go through with that commitment. I don't think it's
19 appropriate that it's on that line. It doesn't, it
20 almost seems disjointed.

21 You know, we have a commitment to the
22 environment, we have a commitment to public health and
23 safety, and enforcement is a tool.

24 So I would like to ask Mr. Paparian, because
25 this was part, you know, this really should still be in

1 red with a line under it as a potential addition. I
2 think all of his changes have, they've been worked
3 through and they really looked really good, and I think
4 that his effort was awesome.

5 But I think that this sends, this may be geared
6 at looking at minimum standards in his, in his desire,
7 but remember we're in the goal year of AB 939, and it
8 also sends a message to 536 cities that we may be
9 changing the way that we're going to deal with biennial
10 reviews from trying to work with people to putting a
11 hammer down, and I don't think it's worth it.

12 So I'd like to see if we can remove it and just
13 leave it as a tool.

14 BOARD CHAIR MOULTON-PATTERSON: Mr. Paparian.

15 BOARD MEMBER PAPARIAN: I mean I -- the short
16 answer, yes.

17 BOARD MEMBER JONES: Thank you, Mr. Paparian, I
18 appreciate that. In that case, if there aren't any other
19 questions --

20 BOARD MEMBER MEDINA: I have --

21 BOARD MEMBER JONES: Oh, okay. I'm sorry.

22 BOARD CHAIR MOULTON-PATTERSON: Mr. Medina.

23 BOARD MEMBER MEDINA: And again, this is in
24 regard to goal one. And I strongly support increased
25 participation in product stewardship; however, I was

1 concerned that we, that the Product Stewardship Institute
2 is the only organization that we mention in our strategic
3 plan, and that was my concern included in that, under
4 that, under the strategies.

5 I think I would support a statement that says we
6 support national product stewardship's efforts, but I
7 would not name one particular institute because I don't
8 think we've named any other organization or entity within
9 our strategic plan.

10 I think that, you know, we could support the
11 Product Stewardship Institute, whether that's in dollars
12 or words of encouragement, but I don't think that it
13 would be necessarily proper to name an organization
14 within the strategic plan if that's the only organization
15 that we name.

16 BOARD CHAIR MOULTON-PATTERSON: Mr. Paparian.

17 BOARD MEMBER PAPARIAN: We actually do mention
18 SWANA in the plan as well in a different item, but I'm
19 fine with going back and making this a more general
20 suggestion, you know, something like, "Support national
21 product stewardship efforts."

22 BOARD CHAIR MOULTON-PATTERSON: Through
23 partnerships maybe?

24 BOARD MEMBER PAPARIAN: Through --

25 MS. PACKARD: If you take a look at strategy

1 number four it was intended to kind of capture the same
2 idea of partnerships and product stewardship, so maybe we
3 could combine those and remove the reference to the
4 Product Stewardship Institute.

5 BOARD MEMBER PAPARIAN: Or maybe the specific
6 reference but, you know, it includes, include reference
7 to national efforts on carpet and paint -- or excuse me,
8 carpet and electronics.

9 MS. PACKARD: Okay. We can do that.

10 BOARD MEMBER PAPARIAN: Because I think that's,
11 you know, those are the things that are out there, those
12 are really starting to take some time and resources from
13 the Board, and I think we ought to identify them, at
14 least those specifically, and then leave the door open
15 for additional products that might come along in the
16 future.

17 MS. PACKARD: Okay. We can combine four and
18 nine and make, and mention the specific materials that
19 you've talked about there, okay.

20 BOARD MEMBER PAPARIAN: And Madam Chair.

21 BOARD CHAIR MOULTON-PATTERSON: Anything else,
22 Mr. Paparian?

23 BOARD MEMBER PAPARIAN: If Mr. Medina -- does
24 that complete what you have?

25 BOARD MEMBER MEDINA: Yes, it does.

1 BOARD MEMBER PAPARIAN: Yeah. I'd like to echo
2 the comments of the Chair, that this is a very well put
3 together document. It was, I know, very challenging to
4 pull together the different subgroups and recommendations
5 from the subgroups and compile them in what seems to be
6 one voice when there were many voices going into the
7 drafting of this.

8 I have a couple of additional suggestions apart
9 from this. And this kind of goes back, partly to what
10 Mr. Aprea said on the last item, and that is how do we
11 relate this strategic plan to our financial resources and
12 budget in the future?

13 And one thought I'd like to put on the table is
14 that perhaps we should put together some sort of special
15 budget subcommittee of the Board to work with staff on
16 how to allocate resources to assure that the strategic
17 plan is well implemented, and maybe have that group
18 report back to the Board at a future meeting.

19 And then at the same time, perhaps have the
20 staff come back as they're presenting this plan about
21 how, and talk about how it might affect budget and
22 personnel resources at the Board and how to, how we might
23 go about assuring that the priorities of the plan and our
24 budget spending are in sync.

25 MS. PACKARD: Well one of the -- if I may?

1 BOARD CHAIR MOULTON-PATTERSON: Sure.

2 MS. PACKARD: One of the things that's kind of
3 next on the agenda once we get the plan adopted is to
4 develop an implementation plan that will include some of
5 the information you're talking about; more detailed,
6 action oriented steps that describe exactly what we're
7 going to do, and perhaps the resources associated with
8 those activities. And also hopefully performance
9 measures that we will be also required to develop through
10 agency that will allow us to measure our movement toward
11 those objectives and strategies, etcetera.

12 So the plan was already to do that and we can
13 certainly talk about structuring that effort around a
14 committee that, like you're describing.

15 BOARD CHAIR MOULTON-PATTERSON: So you're saying
16 that this would ensure that our budget is tied to our
17 strategic plan, so to speak, as a living document?

18 BOARD MEMBER PAPARIAN: Exactly.

19 BOARD CHAIR MOULTON-PATTERSON: I think that's a
20 good idea, and maybe next month we can officially do
21 that.

22 We'll work with you, Ms. Packard.

23 MS. PACKARD: All right. Thank you.

24 BOARD CHAIR MOULTON-PATTERSON: Thank you. So I
25 think you understand that we are very supportive of

1 staff.

2 MS. PACKARD: I think I have my directions.

3 Thank you.

4 BOARD CHAIR MOULTON-PATTERSON: Staff's
5 proposal. Okay.

6 We're moving onto diversion planning and local
7 assistance, item thirteen. We have item thirteen and
8 item seventeen as the rest on this afternoon.

9 MR. SCHIAVO: Good afternoon. Item number
10 thirteen --

11 BOARD CHAIR MOULTON-PATTERSON: Excuse me.
12 Would you like a break now?

13 THE REPORTER: No.

14 BOARD CHAIR MOULTON-PATTERSON: Okay. Go ahead.

15 MR. SCHIAVO: Item number thirteen is
16 consideration of staff recommendation to change the base
17 year to 1998 for the previously approved source reduction
18 and recycling element and consideration of the 1997-1998
19 biennial review findings for the source reduction
20 recycling element and household hazardous waste element,
21 and consideration of compliance order IWMA-BR-9950 for
22 the City of Big Bear Lake, San Bernardino County. And
23 this item will be presented by Tabettha Willmon of the
24 Office of Local Assistance.

25 MS. WILLMON: Good afternoon, Madam Chair and

1 Board members. My name is Tabetha Willmon, and I'm with
2 the Office of Local Assistance.

3 This item is in response to a compliance order
4 placed on the City of Big Bear Lake for the 1997-1998
5 biennial review period for inaccurate diversion rate
6 measurement.

7 The city determined that developing a new waste
8 generation study based on 1998 data, with the intent of
9 establishing a new more accurate base year, would be the
10 best method to comply with their compliance order. The
11 city's diversion study contains no statistical
12 extrapolations.

13 As a result of staff's analysis, approximately
14 7,632 tons of recycling diversion was deducted from the
15 city's study with the concurrence of the city.

16 Approximately 31 tons of burned tires that were
17 deducted as biomass cannot count as diversion until the
18 year 2000.

19 In addition, 7,601 tons of asphalt and concrete
20 diversion was deducted in order to be more representative
21 of the average annual asphalt and concrete diversion
22 occurring in the city.

23 Based on staff's analysis of the generation
24 study, it has been determined that their diversion rate
25 for 1998 is 72 percent. Therefore, staff is recommending

1 the Board approve the proposed new base year.

2 The city has successfully completed all the
3 requirements identified in its compliance order.

4 Therefore, staff recommends the Board find that the city
5 has completed its compliance order.

6 Staff has visited the jurisdiction and had the
7 opportunity to see the facilities and the diversion
8 programs in the area.

9 Staff has determined that the program
10 implementation is adequate, and therefore recommends the
11 Board accept the 1997-1998 biennial review.

12 A representative from the city is present to
13 answer any questions and this concludes my presentation.

14 Thank you.

15 BOARD CHAIR MOULTON-PATTERSON: Thank you very
16 much. Before we go to questions, I just had one comment.

17 As I mentioned at the briefing, because there's
18 a lot of questions about programs and so forth, rather
19 than just the program listing, I'd like to see the
20 database printout with a little more detail when you're
21 sending these us.

22 MR. SCHIAVO: Okay. Would you like to include
23 all the staff working notes or would you like the version
24 that's just more details about the programs?

25 BOARD CHAIR MOULTON-PATTERSON: More details.

1 MR. SCHIAVO: Okay.

2 BOARD CHAIR MOULTON-PATTERSON: Mr. Eaton, did
3 you have --

4 BOARD MEMBER EATON: Yeah, you know this is my
5 favorite subject.

6 Have they formed a regional agency?

7 MS. WILLMON: No, they haven't.

8 BOARD MEMBER EATON: So they haven't completed
9 all of their compliance order. That was part of the
10 compliance order.

11 MS. WILLMON: Actually I believe they had the
12 option to either form regional agency --

13 BOARD MEMBER EATON: No, a compliance -- you
14 stated that they completed all the elements of a
15 compliance order. And one of the elements of a
16 compliance order was to form a regional agency. So I
17 just want to correct the record. Whether or not we do
18 what we do, there was no regional agency formed so,
19 therefore, they didn't meet the compliance order.

20 MR. SCHIAVO: Actually they had four or five
21 options, and one of the options was to form a regional
22 agency; another option was to correct the existing base
23 year; another option was to perform a new base year; and
24 there's another option.

25 BOARD MEMBER EATON: That's not how the item

1 reads. Thirteen what?

2 MR. SCHIAVO: Three.

3 BOARD MEMBER EATON: Well go on, and while
4 you're looking at 13-3 you'll see that's what it says
5 they had to meet, so maybe the item's not correct.

6 MR. SCHIAVO: I think there was a word omitted.

7 BOARD MEMBER EATON: Well if there is or there
8 isn't, I'll ask the other question and you can check on
9 that.

10 MR. SCHIAVO: Yes. This is typical of the
11 language that's in the other compliance order
12 jurisdictions that have come forward, and they were given
13 a list of different options.

14 BOARD MEMBER EATON: What's the size of Big Bear
15 Not population, but isn't a one by two mile city, city
16 limits, if I'm not mistaken?

17 BOARD CHAIR MOULTON-PATTERSON: Why don't we
18 have the representative of the city come up?

19 BOARD MEMBER EATON: What's the size?

20 MR. ARENELLA: Good afternoon, Madam Chair,
21 members of the Board. My name is Scott Arenella, and I'm
22 with the city of Big Bear Lake.

23 The city is much larger than that. It's about
24 six miles wide by five miles.

25 BOARD MEMBER EATON: And so each year all of

1 those streets are dug up as a result of the winter?

2 MR. ARENELLA: Well each year streets are
3 repaired and either overlaid or removed and replaced,
4 more often than cities down the hill because of weather
5 conditions, that's correct. Not the same streets every
6 year but, our budget doesn't allow us to do all our
7 streets at once.

8 BOARD MEMBER EATON: Because in reviewing some
9 of the other areas in the Sierras, your rate of road
10 repair and the amount of precipitation and snowfall which
11 is below those other cities and counties that have a much
12 higher snowfall, seems to be an inordinate amount of road
13 work, especially given the fact that the funds from the
14 Caltrans stip there, I think a lot of this is probably
15 county or state work because it's a state highway, it's
16 not a city street.

17 So I'd like some information about how much
18 actually is city and how much is state and how much is
19 county.

20 MR. ARENELLA: Are you referring to --

21 BOARD MEMBER EATON: If a workplace is outside
22 of your city boundary it's not, you can't claim it.

23 MR. ARENELLA: We're not claiming anything that
24 doesn't take place within the city limits of Big Bear
25 Lake.

1 BOARD MEMBER EATON: And what's your annual
2 influx of tourists?

3 MR. ARENELLA: Approximately five million.

4 BOARD MEMBER EATON: And that's why you said
5 that you can have 56 pounds per person of generation per
6 day? That's a lot of food. I don't think even the City
7 of Santa Monica has that.

8 MR. ARENELLA: Well, I can address that for you
9 if you'd like?

10 BOARD MEMBER EATON: Please.

11 MR. ARENELLA: First of all, we've done a survey
12 to show the average of restaurants that we have per
13 permanent resident in the city. We have 108 residents
14 per restaurant in the City of Big Bear Lake. That
15 compares to cities down the hill that average about one
16 for every 1,200 permanent residents.

17 Another thing is that with five million
18 residents -- or five million visitors per year, our
19 resort association states that we average about 2.7 days
20 per resident. That calculates out to about the
21 equivalent of 43,300 year-round residents. And when you
22 calculate the disposal per person per day at an equal
23 standard of other cities, it comes out to about 8.8
24 pounds per person per day.

25 BOARD MEMBER EATON: Well let me ask our staff,

1 based on a population of 40,000, what is the average
2 pounds per day?

3 MR. SCHIAVO: Based on 140,000?

4 BOARD MEMBER EATON: What's the national
5 average, how about that? Why don't you give me that
6 first?

7 MR. SCHIAVO: Well the national average will be
8 much more distorted than California's average because
9 California's disposal average, this disposal which we do
10 track closely is higher than the national generation
11 average because we include industrial waste, the C and D
12 waste, the agricultural waste, so you can't compare
13 national with statewide.

14 The statewide average, I'm just ballparking, is
15 around nine in California, the disposal is six. You
16 know, it's nine point something, and the disposal number
17 itself is about six pounds per person per day so --

18 MR. ARENELLA: If I could also bring up another
19 factor that contributes to this. We have unique to our
20 community, because we have such a high volume of weekend
21 residents, we have a couple of, we call 'em public trash
22 sites, clean bear sites, if you will; and they're
23 designed for people that come up on the weekend and maybe
24 their trash day in the neighborhood is on a Thursday,
25 it's not really practical for them to leave their trash

1 out for that long, especially with the wildlife up there;
2 so we have these areas set up to where the residents of
3 Big Bear Lake only are supposed to be able to bring their
4 trash.

5 And unfortunately there's a lot of outlying
6 county area that doesn't provide this level of service to
7 the residents that we do; and unfortunately we get a
8 large influx of county residents that find this very
9 convenient for them to dump their trash as well.

10 We've done surveys on busy holiday weekends when
11 we have a lot of traffic in there, and our survey shows
12 about 23 percent of the visitors into our clean bear
13 sites are actually from unincorporated county areas, and
14 that's just the 23 percent that actually admit it.

15 BOARD MEMBER EATON: Mr. Schiavo, did you find
16 the agency and the compliance order? Do you have the
17 compliance order there?

18 MR. SCHIAVO: The language in the agenda item
19 says, "To work with outreach staff of the Office of Local
20 Assistance to determine which of the following methods
21 would be most appropriate to address the deficiency
22 identified --" it's on page 13-3 "-- by October 29th."
23 And then the Board staff will provide an update, I
24 believe, I can't remember the instance, but will provide
25 an update to the Board by December 14th of the method

1 selected. And then it lists five different potential
2 methods.

3 So that part was accomplished, I just can't
4 remember the details.

5 BOARD MEMBER EATON: I would hope in the future
6 if we could just have the compliance orders attached.

7 MR. SCHIAVO: Okay.

8 BOARD MEMBER EATON: That's all I've got for
9 right now.

10 BOARD CHAIR MOULTON-PATTERSON: Thank you. Any
11 other questions?

12 Mr. Medina.

13 BOARD MEMBER MEDINA: Yes, on page 13 I notice
14 that under the diversion rate, the old rate in 1997 was
15 minus 26 percent, and the new one for 1998 is 72
16 percent. How much of that is accounted for by the lake
17 soil dredgings?

18 MS. WILLMON: Actually I'm a little confused as
19 to your question. The negative 26 percent -- could you
20 repeat the question?

21 BOARD MEMBER MEDINA: Yes. Under the old 1997
22 diversion rate you had minus 26 percent, and under the
23 new 1998 you have 72 percent, and I just wondered of the
24 lake soil dredgings, how much of that percentage do they
25 account for?

1 MS. WILLMON: In the, in the negative
2 percentages we wouldn't know because that was, it was a
3 calculation based on their original base year. And what
4 they do is take the original base year projected
5 generation when they apply different adjustment methods,
6 and then give them a maximum allowable disposal. So we
7 really wouldn't know how much for the negative.

8 They, the city believes that its original base
9 year wasn't accurately counted, so that the lake
10 dredgings, we don't know that they were actually in the
11 original base year which was one of the reasons why they
12 chose this.

13 BOARD MEMBER MEDINA: And how much do they
14 account for in the new base year?

15 MS. WILLMON: It's 12,000 times -- go ahead and
16 answer.

17 MR. ARENELLA: I believe it would change the
18 percentage from 72 percent to 66 percent.

19 MS. WILLMON: He wants to know how many tons.

20 MR. ARENELLA: Are you looking for a change in
21 the percentage or an actual weight?

22 BOARD MEMBER MEDINA: Actually both.

23 MR. ARENELLA: The tonnage was 9,565, and we'd
24 have to do a quick calculation. I thought we went over
25 the calculation earlier, and to my recollection it

1 changed it from 72 to 66 percent overall. But we can
2 check that with a calculator if you like.

3 BOARD MEMBER MEDINA: And where do the lake soil
4 dredgings, where do they go?

5 MR. ARENELLA: Currently we use them for a
6 variety of city or municipal type projects, grading,
7 filling. We just did a large project with our wastewater
8 facility plant just outside the city. They did a large
9 remodel there and they were in desperate need of some
10 soil or, not necessarily clean soil, but some sort of
11 fill.

12 BOARD MEMBER MEDINA: Well I guess my concern
13 here is that they've been dredging the San Francisco Bay
14 for years, and I don't know that either the City of
15 Oakland or the City of San Francisco are claiming that as
16 part of their diversion rate.

17 BOARD MEMBER EATON: You better get on the phone
18 right now.

19 BOARD MEMBER JONES: Actually the stuff in the
20 city is hazardous because we tried to do that, do a deal
21 to take that stuff up to one of our facilities, but it's
22 got too many heavy metals in it.

23 BOARD CHAIR MOULTON-PATTERSON: Mr. Paparian.

24 BOARD MEMBER PAPARIAN: Can I just followup on
25 the question? So as I understand it, the lake gets

1 dredged, the tops, then that rich soil-like material is
2 then placed somewhere, and you get diversion credit for
3 that material? So that assumes then that it was disposed
4 of at some time, is that right?

5 MR. ARENELLA: That's correct. That used to be
6 landfill. It's not exactly a clean product when it comes
7 out of the lake, there's lots of rocks and other things
8 like that that, you know, at one time earlier there was
9 no use for it and it was very easy and inexpensive to
10 dispose of at the landfill. We've since changed our
11 practice.

12 BOARD MEMBER PAPARIAN: Okay. And then just one
13 other question related to that. When you weighed the
14 9,565 tons, is that a wet weight or a dry weight?

15 MR. ARENELLA: I believe that is a dry weight.

16 BOARD MEMBER PAPARIAN: So that would be the
17 actual material that's applied.

18 MR. ARENELLA: It's almost a clay sort of
19 material I'll call it, it's -- yeah.

20 BOARD MEMBER PAPARIAN: Okay. Thank you.

21 BOARD MEMBER MEDINA: And then there's all those
22 lead sinkers that you have to remove from the dredged
23 soil.

24 (LAUGHTER.)

25 MR. ARENELLA: Part of our reuse program.

1 BOARD CHAIR MOULTON-PATTERSON: Any other
2 questions? It just seems so, that you went from so low
3 to so high, I'm just trying to understand it all.

4 MR. ARENELLA: Well if I could explain a little
5 bit of that. Part of the problem there was the
6 Inaccuracy of our 1990 base year calculation.

7 I mean we know it's, you know, in reality it's
8 impossible to have a negative diversion, I mean we can't
9 be throwing away more than we're generating, so that was
10 part of the problem that forced us to want to get a new
11 base year, something that was more accurate, something
12 that we could actually document now, like Ms. Willmon
13 said in the report, we didn't use any estimates in this,
14 we actually used, you know, tonnages from contractors and
15 from city records and, as opposed to going back to 1990
16 where aerial photos were used to determine how much was
17 at the landfill. And it just was near impossible to
18 verify, and in our opinion not a very good method of
19 estimating.

20 BOARD CHAIR MOULTON-PATTERSON: I understand
21 that, and we've seen a lot of base years that there were
22 inaccuracies; but just 72 percent, we don't usually see
23 72 percent, do we? Okay. Thank you.

24 Any final comments from staff on anything?

25 MR. SCHIAVO: Again, the reason for the high

1 amount of pounds per person per day is that, again, there
2 aren't that many people there, and we're talking about
3 heavy weighted material, so it's going to really skew
4 that number upward quite a bit.

5 That also is the reason for the 72 percent is
6 that we're looking at a community that their number is
7 being driven by a product or a material type for the most
8 part that, again, is very dense and heavy, where most
9 jurisdictions are going to have a higher percentage of
10 residential to non-residential type weights.

11 This is based on actual weight tickets, it's not
12 based on estimates so, you know, that's, and this
13 material was previously disposed in prior years.

14 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.

15 BOARD MEMBER JONES: Just a question, Madam
16 Chair.

17 Patrick, on the road work, it's been done for
18 what, the last four years or three years and what --

19 MR. SCHIAVO: Yeah, three to four years and it
20 was normalized over a three year average.

21 BOARD MEMBER JONES: And then is the plan to
22 continue at that rate or is this an outlier?

23 MR. SCHIAVO: It's my understanding, and I can
24 be corrected, is that this was an ongoing effort, that's
25 why we took the three year averaging so that we could

1 normalize it so we wouldn't be using any kind of a spike,
2 that's why the number actually was reduced from what was
3 submitted to us because we used the normalized and not
4 the spiked numbers.

5 BOARD MEMBER EATON: So the public -- and I
6 apologize, you may have done this already but I had to
7 run upstairs real quick.

8 So is it in the plan for the city that they're
9 going to continue this road work over the next couple of
10 years? Or is this the end of all the road work in Big
11 Bear?

12 MR. SCHIAVO: That was my assumption, but the
13 city representative can best answer that.

14 MR. ARENELLA: Right. No, our roads are nowhere
15 near the level that we want them. We incorporated in
16 1980, and we inherited a lot of poorly constructed and
17 maintained roads from the county back then. And we
18 anticipate this is going to be quite an ongoing process
19 to get our roads to where they should be.

20 And we still plan on practicing not disposing of
21 any of this material at the landfill, you know, we're
22 able to, because of our technology with, or current
23 technology of being able to grind and use this for
24 adequate base per our city engineer, we plan on
25 continuing this practice.

1 BOARD MEMBER JONES: And I asked the question
2 because we always worry about outliers, the occurrence
3 that happens only once every four or five years. And
4 when that gets fed into the generation then we have a
5 super high generation number, so no matter what you do
6 you're going to come out in good shape. So, you know,
7 we're always trying to protect against those kind of
8 inaccuracies or anomalies.

9 I think that you're real fortunate that you got
10 a lot of road and a lot of lake to dredge and, but you
11 know what, there's a lot of jurisdictions out there that
12 that have the same thing, and there's others that don't.

13 So with that, I'm going to move adoption of
14 Resolution 2001-295, consideration of the staff
15 recommendation to change the base year to 1998 for the
16 previously approved source reduction recycling element,
17 consideration of the 1997-'98 biennial review findings
18 for the source reduction recycling element and household
19 hazardous waste element, and consideration of completion
20 of compliance order IWMA-BR-99-50 for the City of Big
21 Bear Lake in San Bernardino County.

22 BOARD CHAIR MOULTON-PATTERSON: Do we have a
23 second?

24 BOARD MEMBER PAPARIAN: I'll second.

25 BOARD CHAIR MOULTON-PATTERSON: Okay. We have a

1 motion by Mr. Jones, seconded by Mr. Paparian to approve
2 Resolution 2001-295.

3 Please call the roll.

4 BOARD SECRETARY VILLA: Eaton?

5 BOARD MEMBER EATON: No.

6 BOARD SECRETARY VILLA: Jones?

7 BOARD MEMBER JONES: Aye.

8 BOARD SECRETARY VILLA: Medina?

9 BOARD MEMBER MEDINA: No.

10 BOARD SECRETARY VILLA: Paparian?

11 BOARD MEMBER PAPARIAN: Aye.

12 BOARD SECRETARY VILLA: Moulton-Patterson?

13 BOARD CHAIR MOULTON-PATTERSON: No. Motion

14 fails.

15 MR. SCHIAVO: I would like some future direction
16 because this is a compliance order jurisdiction and they
17 went ahead and did a new base year and it's been
18 disapproved, so I'd like to have some kind of direction
19 as far as the next step.

20 We have offered where you can do, if you choose,
21 if you're uncomfortable with whatever the line item may
22 be, to reduce that line item, but this is again a
23 compliance order jurisdiction, so I'd like to know where
24 to go next.

25 BOARD MEMBER EATON: I'd like you to confer with

1 the planning department and come back to us with a staff
2 report with what our options are.

3 BOARD CHAIR MOULTON-PATTERSON: Thank you.

4 Items number 14, 15, and 16 were approved on consent.

5 And we go to our final option -- final item of
6 the day, number 17. Consideration of staff
7 recommendation to change the base year to 1999 for the
8 previously approved source reduction and recycling
9 element for the City of Sand City, Monterey County.

10 MR. SCHIAVO: Okay. This item is consideration
11 of the staff recommendation to change the base year to
12 1999 for the previously approved source reduction and
13 recycling element for the City of Sand City, Monterey
14 County.

15 And this will also be presented by Tabetha
16 Willmon.

17 MS. WILLMON: Okay. The item before you
18 includes a request from the City of Sand City to change
19 their base year to 1999. In light of last week's Board
20 briefing, page two of the certification form has been
21 changed from 47 percent to 45 percent.

22 In addition, the color of the form has been
23 lightened to make it more readable. The revised
24 certification is in your Board packets.

25 Based on staff's analysis of the new base year

1 generation study, it has been determined that the
2 diversion rate for 1999 is 45 percent. The diversion
3 study contains no statistical extrapolations.

4 The city is approximately two square miles and
5 has a population of 190 people. In addition, the city is
6 host to two major retail shopping centers that serve the
7 surrounding jurisdictions on the Monterey Peninsula.

8 Board staff has visited the jurisdiction and had
9 the opportunity to see the diversion programs. The
10 proposed new base year more adequately documents the
11 city's diversion, therefore staff is recommending the
12 Board approve the proposed new base year.

13 A member of the city is present to answer any
14 question. This concludes my presentation.

15 BOARD CHAIR MOULTON-PATTERSON: Thank you. I
16 have a question for the city, if I might?

17 MR. PULLER: Yes. Charles Puller for the City
18 of Sand City.

19 BOARD CHAIR MOULTON-PATTERSON: I was just
20 wondering why you dropped the school recycling and
21 curriculum program. And maybe you're in a different
22 school district and they dropped it, but if you could
23 address that?

24 MR. PULLER: Well Sand City historically has
25 been sort of the industrial town for the Monterey

1 Peninsula.

2 BOARD CHAIR MOULTON-PATTERSON: Right.

3 MR. PULLER: And the population is incredibly
4 low. There are no schools physically located within Sand
5 City. Children within Sand City attend unified -- the
6 Monterey Peninsula Unified School District. So there are
7 schools located in the adjacent cities of Seaside and
8 Monterey, and there are also schools within county
9 areas. But the children of Sand City continue to attend
10 the other schools in the other jurisdictions. There are
11 no schools physically within Sand City.

12 BOARD CHAIR MOULTON-PATTERSON: Okay. But do
13 those districts, do you know, do they --

14 MR. PULLER: I believe that they do, it's part
15 of the SRRE for the Monterey County that those programs
16 are implemented where the schools are existing.

17 BOARD CHAIR MOULTON-PATTERSON: Okay. Well
18 we'll certainly encourage those other areas to include
19 it. Thank you very much. That was my only question.

20 Other members? Mr. Paparian.

21 BOARD MEMBER PAPARIAN: Thank you, Madam Chair.
22 Just one clarifying point. The document I have, which is
23 the signed certification form, and then the second page
24 is where you change from 47 to 45 percent?

25 MR. PULLER: Yes.

1 BOARD MEMBER PAPARIAN: Right. The one I have
2 was signed by the city on 7/20, but the change was made
3 in August. So I just want to clarify with our counsel
4 that that's okay. And that, maybe you need to just
5 verify that that's all --

6 MS. WILLMON: Yeah, and you know what, that was
7 a typo on our part, and we made the change in
8 consultation with the city so they're aware that it was,
9 it was changed from 47 to 45.

10 BOARD MEMBER PAPARIAN: Okay. So I just want to
11 make sure with our counsel that that's satisfactory that
12 this is all legit here.

13 BOARD CHAIR MOULTON-PATTERSON: Okay. Mr.
14 Block.

15 LEGAL COUNSEL BLOCK: Elliot Block from the
16 legal office.

17 Just since we have a representative of the city
18 here, I think probably it would be useful for the record
19 to simply have them acknowledge that they agree that that
20 was, in fact, a typographical error, that the 45 percent
21 is the correct number.

22 MR. PULLER: I agree that 45 percent is correct.

23 BOARD CHAIR MOULTON-PATTERSON: Okay. Thank you
24 very much.

25 LEGAL COUNSEL BLOCK: Just one more point. And

1 then we just had a discussion with the staff and we'll
2 institute some procedures in the future if we're making
3 some changes like that that we'll make sure to also be
4 updating the signature pages so that doesn't happen in
5 the future.

6 BOARD CHAIR MOULTON-PATTERSON: Thank you.

7 BOARD MEMBER PAPARIAN: And I want to, you know,
8 thank the staff and the city for going through a lot of
9 these changes that it was, I know it was difficult and
10 challenging but I think there has been a better product,
11 and we dealt with some of the issues involving the weight
12 of bales and pallets and so forth, and I'm much more
13 comfortable with what we have now as a result.

14 MR. PULLER: Thank you.

15 BOARD CHAIR MOULTON-PATTERSON: Yes. Thank you,
16 staff. Thank you.

17 BOARD MEMBER EATON: I just had one question.

18 BOARD MEMBER 1: Oh, Mr. Eaton.

19 BOARD MEMBER EATON: Mr. Schiavo, on the
20 cardboard here, last month we had a jurisdiction that was
21 located in far Southern California that had about five
22 times the amount of cardboard, I believe it was a great
23 deal more than what Sand City has developed, and Sand
24 City has more population, have we checked as to how that
25 can be?

1 MR. SCHIAVO: Sand City is actually only 190
2 people.

3 BOARD MEMBER EATON: I know, but the
4 jurisdiction we had before that had less population.

5 MR. SCHIAVO: No, it was in the thousands.

6 BOARD MEMBER EATON: Oh, and it was 300
7 different people could generate how many more times
8 cardboard?

9 MR. SCHIAVO: No, it was quite a bit bitter. I
10 mean it wasn't a huge city but it was quite a bit bigger
11 than 190.

12 BOARD MEMBER EATON: But here it's 98 percent of
13 the activity in Sand City, which I'm very familiar with,
14 is non-residential, so there is, there is a basis for
15 their cardboard use.

16 So I'm just wondering how the other community
17 can have more cardboard with just a little more
18 population? Because I didn't really buy the fact that
19 they come across and buy beer. And I'd like to find out
20 why, what's the cardboard going on?

21 MR. SCHIAVO: Why there's more in the other
22 city?

23 BOARD MEMBER EATON: Yeah.

24 MR. SCHIAVO: I --

25 BOARD MEMBER EATON: I mean do we compare so

1 that we get some sense of the activities in different
2 communities?

3 MR. SCHIAVO: We compare, but sometimes it's
4 difficult to compare because of the different makeup of
5 the cities. Sand City, and I know you're very familiar
6 with the area, is primarily a huge shopping center.

7 BOARD MEMBER EATON: Right.

8 MR. SCHIAVO: With a Costco and Target and some
9 of those.

10 BOARD MEMBER EATON: And I would understand why
11 they would have a lot of cardboard, that's my point
12 exactly. So I understand that. I'm saying when we
13 approved the others, there aren't any Costcos --

14 MR. SCHIAVO: Right.

15 BOARD MEMBER EATON: -- there's just a liquor
16 store and a market, there was no Costco --

17 MR. SCHIAVO: No.

18 BOARD MEMBER EATON: -- and there was no Food 4
19 Less.

20 MR. SCHIAVO: And I can't recall what the
21 tonnage was there.

22 BOARD MEMBER EATON: Maybe you should check on
23 those.

24 MR. SCHIAVO: Okay. But we do look at the
25 indicator of pounds per person per day and this one was

1 extremely low, and the other one was actually lower than
2 the statewide average so, you know, that's the other
3 indicator that we use.

4 BOARD CHAIR MOULTON-PATTERSON: Thank you. Mr.
5 Medina.

6 BOARD MEMBER MEDINA: Yes, Madam Chair. I'd
7 like to move Resolution 2001-318, changing the base year
8 to 1999 for the previously approved source reduction and
9 recycling element for the City of Sand City, Monterey
10 County.

11 BOARD CHAIR MOULTON-PATTERSON: Okay. I'll
12 second that.

13 We have a motion by Mr. Medina, seconded by
14 Moulton-Patterson to approve Resolution 2001-318.

15 Please call the roll.

16 BOARD SECRETARY VILLA: Eaton?

17 BOARD MEMBER EATON: Aye.

18 BOARD SECRETARY VILLA: Jones?

19 BOARD MEMBER JONES: Aye.

20 BOARD SECRETARY VILLA: Medina?

21 BOARD MEMBER MEDINA: Aye.

22 BOARD SECRETARY VILLA: Paparian?

23 BOARD MEMBER PAPARIAN: Aye.

24 BOARD SECRETARY VILLA: Moulton-Patterson?

25 BOARD CHAIR MOULTON-PATTERSON: Aye. That

1 concludes today's portion of the agenda, and we'll see
2 everybody back tomorrow at 9:30.

3 (Thereupon the foregoing meeting was
4 concluded at 4:20 p.m.)

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